

Am. 05 3040

Proceedings

(270^d) I, 2

FIRST SESSION, FORTY-THIRD CONGRESS.

EXECUTIVE DOCUMENTS

PRINTED BY ORDER OF

THE HOUSE OF REPRESENTATIVES.

1873-'74.

IN SEVENTEEN VOLUMES:

- Volume 1.....No. 1, Foreign Relations, parts 1, 2, and 3.
 - Volume 2.....No. 1, part 2, War, parts 1, 2, and 3.
 - Volume 3.....No. 1, parts 3 and 4, Navy and Postmaster.
 - Volume 4.....No. 1, part 5, Interior, parts 1 and 2.
 - Volume 5.....No. 1, part 6, and No. 2.
 - Volume 6.....Nos. 3 and 4.
 - Volume 7.....Nos. 5, 36, 124, and 187.
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 - Volume 10.....No. 123 to No. 141, inclusive, except Nos. 124 and 133.
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WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1874.



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TO

THE EXECUTIVE DOCUMENTS

OF THE

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RELATING TO THE

FOREIGN RELATIONS

OF

The United States,

TRANSMITTED TO CONGRESS,

WITH THE ANNUAL MESSAGE OF THE PRESIDENT,

DECEMBER 1, 1873.

PRECEDED BY A

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AN INDEX OF PERSONS AND SUBJECTS.

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VOLUME II.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1873.

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THIS VOLUME.

DEPARTMENT OF STATE.

Hamilton Fish, Secretary of State.

Charles Hale, Assistant Secretary of State. (Resignation took effect January 24, 1873.)

J. C. Bancroft Davis, Assistant Secretary of State. (Appointed January 24, 1873.)

William Hunter, Second Assistant Secretary of State.

ARGENTINE REPUBLIC.

Dexter E. Clapp, consul at Buenos Ayres, and chargé d'affaires *ad interim*.

Julius White, minister resident of the United States at Buenos Ayres.

AUSTRO-HUNGARIAN EMPIRE.

John Jay, envoy extraordinary and minister plenipotentiary of the United States at Vienna.

John F. Delaplaine, secretary of legation and chargé d'affaires *ad interim*.

Baron Lederer, envoy extraordinary and minister plenipotentiary of the Emperor of Austria-Hungary at Washington.

BELGIUM.

J. Russell Jones, minister resident of the United States at Brussels.

Maurice Delfosse, envoy extraordinary and minister plenipotentiary of the King of the Belgians at Washington.

BRAZIL.

James R. Partridge, envoy extraordinary and minister plenipotentiary of the United States at Rio de Janeiro.

R. C. Shannon, secretary of the legation of the United States at Rio de Janeiro, and chargé d'affaires *ad interim*.

CHILI.

Joseph P. Root, envoy extraordinary and minister plenipotentiary of the United States at Santiago.

CHINA.

Frederick F. Low, envoy extraordinary and minister plenipotentiary of the United States at Peking.

David H. Bailey, consul of the United States at Hong-Kong.

COSTA RICA.

Jacob B. Blair, minister resident of the United States at San José.

DENMARK.

Michael J. Cramer, minister resident of the United States at Copenhagen.

DOMINICAN REPUBLIC.

D. Vickers, commercial agent of the United States at Samana.

ECUADOR.

E. Rumsey Wing, minister resident of the United States at Quito.

FRANCE.

E. B. Washburne, envoy extraordinary and minister plenipotentiary of the United States at Paris.

Wickham Hoffman, secretary of legation of the United States at Paris, and chargé d'affaires *ad interim*.

Marquis de Noailles, envoy extraordinary and minister plenipotentiary of the French Republic at Washington.

GERMANY.

George Bancroft, envoy extraordinary and minister plenipotentiary of the United States at Berlin.

Alexander Bliss, secretary of legation of the United States at Berlin, and chargé d'affaires *ad interim*.

Kurd von Schlözer, envoy and minister plenipotentiary of the Emperor of Germany at Washington.

GREAT BRITAIN.

Robert C. Schenck, envoy extraordinary and minister plenipotentiary of the United States at London.

Benjamin Moran, secretary of legation of the United States at London, and chargé d'affaires *ad interim*.

Sir Edward Thornton, envoy extraordinary and minister plenipotentiary of Her Britannic Majesty at Washington.

Archibald Campbell, United States commissioner on the commission for determining and marking the northern boundary of the United States.

GREECE.

John M. Francis, minister resident of the United States at Athens.

GUATEMALA.

Silas A. Hudson, minister resident of the United States at Guatemala.

HAYTI.

Ebenezer D. Bassett, minister resident of the United States and consul general at Port au Prince.

HAWAIIAN ISLANDS.

Henry A. Pierce, minister resident of the United States at Honolulu.

ITALY.

George P. Marsh, envoy extraordinary and minister plenipotentiary of the United States at Rome.

JAPAN.

C. E. De Long, envoy extraordinary and minister plenipotentiary of the United States at Yedo.

MEXICO.

Thomas Nelson, envoy extraordinary and minister plenipotentiary of the United States at Mexico. (Resigned June 1, 1873.)

John W. Foster, envoy extraordinary and minister plenipotentiary of the United States at Mexico. (Entered on the duties June 1, 1873.)

Porter C. Bliss, secretary of legation and chargé d'affaires *ad interim*.

W. Schuchardt, consul of the United States at Piedras Negras.

MOROCCO.

F. A. Mathews, consul of the United States at Tangier.

NETHERLANDS.

Charles T. Gorham, minister resident of the United States at the Hague.

NICARAGUA.

Charles N. Riotte, minister resident of the United States at Leon.

PERU.

Francis Thomas, envoy extraordinary and minister plenipotentiary of the United States at Lima.

RUSSIA.

James L. Orr, envoy extraordinary and minister plenipotentiary of the United States at St. Petersburg. (Appointed December 12, 1872; died May 6, 1873.)

SALVADOR.

Thomas Biddle, minister resident of the United States at San Salvador.

SPAIN.

Daniel E. Sickles, envoy extraordinary and minister plenipotentiary of the United States at Madrid.

A. N. Duffie, consul of the United States at Cadiz.

A. M. Hancock, consul of the United States at Malaga.

SWEDEN AND NORWAY.

C. C. Andrews, minister resident of the United States at Stockholm.

SWITZERLAND.

Horace Rublee, minister resident of the United States at Berne.

Charles H. Upton, consul of the United States at Geneva, and chargé d'affaires *ad interim*.

TURKISH EMPIRE.

George H. Boker, minister resident of the United States at Constantinople.

R. Beardsley, agent and consul general of the United States at Alexandria.

G. H. Heap, consul of the United States at Tunis.

Michel Vidal, consul of the United States at Tripoli.

VENEZUELA.

William A. Pile, minister resident of the United States at Caracas.

XXIII.—MOROCCO.

No. 307.

Mr. Fish to Mr. Mathews.

No. 46.]

WASHINGTON, *October 23, 1872.*

SIR: Your dispatch No. 80, of the 7th ultimo, has been received. It is accompanied by a translation of a note addressed to you by the minister for foreign affairs of Morocco, in which that functionary expresses the hope that this government will not extend its protection to one Hamed Ducaly, who it seems has come to this country for the supposed purpose of obtaining the protection of the government with a view to evading obligations in Morocco. You may inform the Moorish minister for foreign affairs that the Constitution and laws of the United States do not screen any foreigner who may resort to this country from debts which he may have contracted at home, but that creditors can prosecute for them here on the same terms as citizens without any hindrance from the Executive Government.

If, however, the purpose of the communication of that government be to request us not to naturalize Mr. Ducaly, it will be impracticable to comply with such a request if he shall fulfill the required conditions. This Government has no discretion in such a matter. The right of any foreigner to be naturalized according to law, cannot be called in question.

It is apprehended, however, that the Moorish government may be mistaken, if it supposes that the effect of the naturalization of the person adverted to, supposing it to have taken place, would be to weaken his liability for his debts in Morocco, even if he should return to that country. He might, in that case, be prosecuted for them in the consular court, and this Government is bound to presume that impartial justice would there be dispensed.

I am, &c.,

HAMILTON FISH.

No. 308.

Mr. Mathews to Mr. Fish.

No. 96.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Tangier, January 22, 1873. (Received March 24.)

SIR: I have the honor to inform you of an event unprecedented in Morocco, which took place at Tangier on Friday last—the marriage of a lineal descendant of Mohammed. His Highness Prince Abselam el Hazain, grand sheriff of Wazzan, with an English Christian lady, Miss Emily Keene. The bride rode to the British legation on an Arab horse covered with a scarlet saddle embroidered with gold, presented to her by the bridegroom. The marriage was merely a civil ceremony per-

formed by the British minister, and after this was over, the bride and bridegroom rode back to the Royal Victoria Hotel, where a sumptuous wedding dinner had been prepared, and at which all the diplomatic and consular corps were present. The bridegroom, who appeared to very great advantage in his flowing eastern dress of dark blue, was escorted by a guard of Moorish soldiers to the hotel. At the conclusion of the dinner, the happy couple betook themselves to the country residence of the prince at Mount Washington, three miles distant from Tangier.

The bridegroom is a personage of the greatest importance in Morocco; he is the supreme and hereditary chief of the powerful society of the Mulay Taieb, the most important in the Mohammedan persuasion, a society, the numerous members of which of both sexes are spread throughout all Mussulman countries, the greater number being found in the Barbary States and Algiers; and I may also mention that this society has ramifications in the East Indies.

The prince is a stout, robust man, of an olive complexion, thirty-nine years of age, who distinguished himself greatly during the war with Spain in 1859-'60. He is very fond of Christians, very charitable, and remarkably intelligent.

The Emperors of Morocco are, for political and private reasons, members by birth of the Mulay Taieb, whose supreme chief invests them with their imperial authority, consecrates them, and has also in certain instances deposed them.

I beg to acknowledge the receipt of your dispatch No. 48, dated the 9th of December last.

I have, &c.,

FELIX A. MATHEWS.

XXIV.—NETHERLANDS.

No. 309.

Mr. Gorham to Mr. Fish.

No. 86.]

LEGATION OF THE UNITED STATES,
The Hague, March 7, 1873. (Received March 27.)

SIR: The Japanese ambassadors are now in Holland, making the Hague their headquarters.

The day after their arrival an audience was accorded them by the King, who received them with more than ordinary demonstrations of respect, if judged by the display of royal troops and carriages employed in escorting them to and from the palace. No entertainment has been offered them at the royal residence, however, nor will there be, as His Majesty has since retired to his favorite "Loo," whence he will not come, probably, during their stay. They have been handsomely entertained by Prince Frederic, the minister of foreign affairs, and others, so that thus far they can have felt no lack of civility on the part of their ancient friends.

It is not commonly known that they had any motive in coming apart from their general object in touring through Europe, unless it might have been to notice specially the drainage system of the country, in

which they manifest an interest, though I have some reason to suspect that, encouraged by the generosity of the American Government, they had some expectation of procuring a relinquishment of the whole or a part of the 750,000 florins of indemnity still due from their country to this. They will meet with little encouragement, however, the government being in no humor for such a concession.

The commercial relations between the two countries are now inconsiderable, and the future by no means assuring.

It is somewhat humiliating that, after enjoying a limited but almost exclusive commercial intercourse with Japan for more than two hundred years, and after aiding to open the way for more extended relations, the Dutch should witness the decay of their prestige and see others enjoying that which they had helped to secure mainly to themselves.

The Dutch dialect, even once somewhat familiar to a portion of the Japanese, has been supplanted by the English, so that their distinguished visitors know nothing of the former, while they communicate quite freely through the medium of the latter.

The embassy will spend about ten days in Holland, and then pass on to Berlin.

They profess to have had an agreeable experience in the United States, and to entertain great expectations of future intercourse.

I have, &c.,

CHAS. T. GORHAM.

No. 310.

Mr. Gorham to Mr. Fish.

No. 88.]

LEGATION OF THE UNITED STATES,
The Hague, April 4, 1873. (Received April 23.)

SIR: In the second chamber to-day the minister of colonies being interrogated relative to affairs in Sumatra, stated that all efforts on the part of the government at pacification having failed, leaving no alternative but to abandon the island or resist by force the aggressions of the Acheenese, war was formally declared on the 26th ultimo.

The government's forces in the East, consisting, I believe, of some 20,000 European soldiers, naval and military combined, the minister thinks sufficient to accomplish what they have undertaken without transporting volunteers from home. No portion of the regular service can be sent out of the country for such purpose.

The chamber was at the same time assured by the ministry that foreign powers were apprised of their doings, and were satisfied.

While the government appears to be supported at home with great unanimity, there evidently exists a deep concern as to the final result. A few believe that it will secure to the Netherlands the control of the island, but a much larger number believe it will prove to be a very long and a very expensive struggle, lessening materially, if it does not wholly destroy, the value of their East Indian possessions.

I have, &c.,

CHAS. T. GORHAM.

No. 311.

Mr. Gorham to Mr. Fish.

No. 94.]

LEGATION OF THE UNITED STATES,
The Hague, July 29, 1873. (Received August 21.)

SIR: In an interview with Baron Gericke to-day, I presented the views embodied in your dispatch of the 21st ultimo, relative to a proposition recently made by the Japanese government to His Majesty the King of Italy.

The subject was not new to the minister, his attention having been called to it some time since by Mr. De Long, our minister at Japan, who, for some months, as you are doubtless aware, served this country in like capacity at the same court.

On receipt of such information, the minister informed me that he promptly communicated the views of his government to Mr. De Long and Mr. Van Hoven, the Dutch minister at Rome, protesting against any infraction in letter or spirit of existing treaties.

On presenting these expressions to Visconti Venattie, Mr. Van Hoven informs the board that he was assured that the proposition was a voluntary offering of the Japanese government; that it had not been favorably received by his, and that no thought was then entertained of accepting it.

Baron Gericke assures me that his views fully accord with yours, and that he is much pleased to learn that similar steps have been taken by the two governments to accomplish the same purpose.

I have, &c.,

CHAS. T. GORHAM.

No. 312.

Mr. Westenberg to Mr. Fish.

[Translation.]

WASHINGTON, *January 29, 1873. (Rec'd January 30.)*

SIR: The Government of the United States some time since, as your excellency is aware, granted, by treaty, exemption from tonnage dues in American ports to Belgian steamers plying directly between the ports of the two countries; and, recently, the same exemption has been granted to the steamers of the North German Lloyd line, which sail directly between the ports of the United States and the city of Bremen.

In view of the privileges with which the Government of the United States has favored these two lines, which sail, respectively, under the Belgian and under the German flag, I take the liberty to address your excellency, with the request that the same favor may be granted to the steamers of the Dutch line between Rotterdam and New York.

In support of my request, I take the liberty to call the attention of your excellency to Article II, of the treaty of October 8, 1782, between the Netherlands and the United States, one of the first treaties of friendship and commerce concluded by the United States, whereby the privileges granted to the most favored nations are secured to subjects of the Netherlands in the United States, in the most explicit terms and of all respects, particularly in matters similar to the one in question.

The Dutch line, in favor of which I address your excellency, has

been established for a short time, and makes direct and regular trips between Rotterdam and New York, at present with two steamers, the Rotterdam and the Maas; it should, therefore, be classed in the same category with the steamers of the Belgian line and those of the North German Lloyd.

As regards the exemption from the payment of tonnage dues which is enjoyed by American steamers in the port of Bremen, and which, according to communications received, was one of the reasons for which the same privilege was granted to the North German Lloyd steamers in American ports, I can inform your excellency that this same exemption is also granted in the Netherlands, since, by a law passed as long ago as July 14, 1855, which was published in the official journal of the Kingdom of the Netherlands of that year, No. 105, tonnage dues on vessels entering Dutch ports were abolished, and there is no likelihood of their being re-established. There is, therefore, in this respect, a perfect similarity between the situation of American steamers, in the port of Bremen, and in the ports of the Netherlands, since they enjoy the same exemption in both.

I hope, therefore, that your excellency will be pleased to take into consideration the request which I have the honor to address to you, and, seeing its justice, will cause to be granted to the Dutch line of steamers between New York and Rotterdam the same exemption from the payment of tonnage dues which has been granted to the Belgian and North German Lloyd lines.

I gladly avail myself of this occasion to offer to you, Mr. Secretary of State, the renewed assurances of my very high consideration.

The minister of the Netherlands,

WESTENBERG.

No. 313.

Mr. Fish to Mr. Westenberg.

DEPARTMENT OF STATE,

Washington, February 19, 1873.

SIR: Your note of the 20th of last month was duly received. It claims for the steamers of the Dutch line between Rotterdam and New York the exemption from tonnage duties recently extended to those of the North German Lloyd between Bremen and ports of this country. In support of the claim you refer to Article II of the treaty of the 8th of October, 1782.

In reply, I have to state that that treaty is associated with reminiscences too important and grateful to every patriotic citizen of the United States to allow this Government to refuse any request which can justly be founded upon its stipulations.

Your application, however, assumes that the venerable instrument adverted to is still in full force. It is true that upon its face its duration is not limited. Its signers undoubtedly hoped, and probably believed, that it would last as long as either of the parties. In this forecast they certainly were as correct as their well-known sagacity gave occasion to anticipate. Pardon me, however, for referring to those events in the history of Europe, at the close of the last and the commencement of the present century, of which the identity and independence of our ancient

friends, the Netherlands, was an unfortunate victim. Results of that character, involving as they do a release from obligations under treaties, are also, it is understood, deemed to involve a relinquishment of benefits claimed under similar instruments. In point of fact, it is believed that the general peace in Europe of 1815, the treaty of 1782 between the United States and the Netherlands was considered as at an end, and has never since been renewed. In proof of its having terminated, permit me to refer you to the note of the 12th of April, 1815, a copy of which is annexed, addressed by Mr. Monroe, Secretary of State, to Mr. F. D. Changuion, then the minister of the Netherlands at Washington.

Accept, &c.,

HAMILTON FISH.

No. 314.

Mr. Westenberg to Mr. Fish.

WASHINGTON, *March 8, 1873.* (Received March 11.)

SIR: I have the honor to acknowledge the receipt of your esteemed note of February 19th, last, in reply to my note of January 29th, by which I claimed for the steamers of the Dutch line between Rotterdam and New York the exemption from tonnage duties recently extended to those of the North German Lloyd, between Bremen and American ports, and in support of which I referred to Article II of the treaty of October 8, 1782, between the Netherlands and the United States. I feel deeply gratified for the so very obliging and courteous terms in which your excellency in said note expresses yourself about the Netherlands, one of America's oldest allies, and the treaty one of America's first.

These generous feelings are the more appreciated as they meet with perfect reciprocity. Yet I hope your excellency will allow me to make some observations on the arguments which induced the United States Government not to consent to the claim which I respectfully presented.

The treaty of 1782 is, indeed, an old, venerable act, and at the time of its conclusion its duration was not limited; but your excellency argues that the events in Europe, in the end of the last century and in the beginning of the present, events from which the Netherlands did suffer, perhaps, more than any other country, could have virtually abolished this treaty. I beg your pardon for not assenting to this opinion.

On account of the war, and on account, too, of the closing of the European continental ports by the decrees of Milan and others, the treaty certainly could not be executed for some years, and the advantages and the obligations resulting from it could in consequence not be fulfilled directly between the contracting parties; but this, I think, involves not an abolition of it. It only involves a temporary suspension; and, moreover, the duties, as well as the advantages, come all to the charge and benefit of that power which, by events of war or others, momentarily occupied and annexed the territory of such power, which was originally one of the contracting parties; and it must be admitted that it revives quite and *totally, ex jure postliminii*, as soon as such party regains its independence and self-government, whatever may be the form adopted for its new internal administration.

The authors on international law in general agree all about this point.

The more this can be admitted as, according to the principles of in-

ternational law, such abolition cannot be argued by *that* contracting party which took no part whatever in the events which were fatal to the other. It may direct its claims in the meanwhile to the occupying power, but cannot in fact declare itself unilaterally free from the treaty; and least so after the other contracting party has regained its independence.

By the way, I take the liberty to observe that, though in Europe the territory of the Netherlands was occupied by France, and in Asia its territories by England, still there remained one part where the Dutch power and independence continued unabated; one part, however small, where the Dutch flag waved uninterruptedly—the island of Decima, the Dutch settlement in the Japanese seas; which therefore forms a constant link between past and later better times, and proves in some way the continuance of the old country.

The trade and navigation that might have taken place by Dutch vessels from that settlement to American ports were consequently always entitled to the advantages and obliged to the duties stipulated in the said treaty of 1782.

It may therefore be argued, I think, that there was no total solution of continuity.

Secondly. A treaty whose duration is not limited cannot be ended unless by a formal and solemn act declaring the disposition of one of the parties to renunciate.

To this effect your excellency refers to a note of April 12, 1815, of the honorable James Monroe, Secretary of State, to Mr. Changuion, then minister of the Netherlands in the United States, a copy of which accompanied your note. I take the liberty to observe that this note of the honorable James Monroe simply mentions views and considerations, which he supposed to be reciprocal, about the treaty of 1782, but can hardly be admitted to be a formal and solemn declaration of renunciation.

It certainly mentions the desire of the United States to reconsider the existing treaties, and to make all of them, as much as possible, uniform for the future; yet it declares nor fixes anything precisely, and leaves the question in suspense until later times. Consequently the treaty of 1782, whatever may have been the opinions and intentions about it between the contracting parties, may be admitted as to have remained fully in force in every respect, and the more so as honorable James Monroe himself, far from repudiating it, assures, in the said note, the willingness of the American Government to make that treaty the basis of a new proposed one between the Netherlands and the United States.

Its stipulations and reciprocal duties and advantages, therefore, must be considered as to continue, unless formally abrogated; and I think it may be admitted they are still existing, as the treaty of 1839, as well as the additional convention of 1852, are not, in some sense, perfect and complete treaties of commerce and navigation in general, but merely conventions made on the basis of the aforesaid treaty of 1782, and regulating merely some points of navigation and the equal treatment of the mutual flags.

Last, I allow myself to remember to your excellency that among the considerations which induced the United States Government to extend the freedom from tonnage duties to the steamers of the North German Lloyd, plying between the American ports and Bremen, was mentioned that such freedom existed, too, in the port of Bremen, as no to duties were levied there.

As to this point, I have the honor to repeat that the same immunity exists equally in the ports of the Netherlands, where the tonnage duties have been abolished by the law of July 14, 1855, and that there is neither prospect nor chance to have them re-established.

I hope I may, on behalf of this consideration and the requested reciprocity, invoke here Article II of the treaty of 1839, and Article III of the additional convention of 1852, and believe that on this account the claim which I presented can be justified, too. I respectfully submit these observations to your excellency's judgment, and hope that, while admitting them to be justified by right and by law, you will reconsider the question and still honor me with a favorable answer.

In my opinion, the amount of these tonnage duties, the exemption of which is requested in favor of a small line is, in itself, of no real importance to the United States Treasury, but the recognition of the point of right will greatly honor the Government of the United States, so justly renowned for its equity and constant desire to observe strictly the existing rights, obligations, and reciprocity.

Accept, &c.,

WESTENBERG.

No. 315.

Mr. Westenberg to Mr. Fish.

WASHINGTON, *March* 17, 1873. (Received *March* 19.)

SIR: In the note of February 19 with which I was honored, and which contained an answer to the claim presented by me for extension, to the Dutch line of steamers between Rotterdam and New York, of the exemption from tonnage duties in American ports, recently accorded to the steamers of the North German Lloyd, your excellency argued that the treaty of 1782 between the Netherlands and the United States was to be considered, for political reasons and events, as being no longer in force. In support of this opinion your excellency referred to a note of April 12, 1815, written by the Hon. James Monroe, Secretary of State, to Mr. Changuion, then minister of the Netherlands in the United States.

In my reply which I had the honor to address to your excellency on March 8th, last, I explained the reasons why I could not agree to your opinion on these points—reasons based as well on considerations of international law as on my consideration of the said note of the Hon. James Monroe.

My attention has since been called to some questions that arose between the Netherlands and the United States about claims of various nature, all of them presented a few years after the note of Hon. James Monroe had been addressed to Mr. Changuion; and in the correspondence that took place, I found confirmed by the official American State Papers the following assertions from both sides, by which, I hope, it will be evident that, whatever may have been, in general, the opinions and intentions in 1815, mentioned by the honorable Secretary of State Monroe, the treaty of 1782 was still considered as to be and to have remained in full force, *de jure* as well as *de facto*. I take the liberty to present here, inclosed to your excellency, the passages concerning it. While submitting to you these declarations, declarations the more to be appreciated,

as those from the American side were given by the United States Government itself by the Hon. John Quincy Adams, the justly celebrated statesman, and precisely when the Hon. James Monroe was President, I hope, respectfully, that they may contribute to bring your excellency to the opinion of the permanent and still actual continuance of said treaty and its basis, and consequently to reconsider favorably the claim which I had the honor to present.

Accept, &c.,

WESTENBERG.

[Extract.]

American State Papers: Documents legislative and executive of the Congress of the United States, selected and edited under the authority of Congress. Clay I. Foreign Relations, vol. v, page 603. Claims against Netherlands, No. 7.

Extract of a letter of Mr. Adams to Mr. Alexander H. Everett, chargé d'affaires at the Hague:

AUGUST 10, 1824.

No principle of international law can be more clearly established than this, that the rights and the obligations of a nation, in regard to other states, are independent of its internal revolutions of government. It extends even to the case of conquest. The conqueror who reduces a nation to his subjection, receives it subject to all its engagements and duties toward others, the fulfillment of which then becomes his own duty. However frequent the instances of departure from this principle may be in point of fact, it cannot, with any color of reason, be contested on the ground of right. On what other ground is it, indeed, that both the governments of the United States and the Netherlands now admit that they are still reciprocally bound by the engagements, and entitled to claim from each other the benefits of the treaty between the United States and the United Provinces of 1782. If the nations are respectively bound to the stipulations of that treaty now, they were equally bound to them in 1810 when the depredations for which indemnity is now claimed were committed; and when the present King of the Netherlands came to the sovereignty of the country, he assumed with it the obligation of repairing the injustices against other nations, which had been committed by his predecessors, however free from all participation in them he had been himself.

Eodem, No. 8, (a,) page 605.

Mr. Everett to Baron de Nagell.

BRUSSELS, February 22, 1819.

It is regarded by the Government of the United States as a settled and unquestionable principle of public law, that the rights and obligations of nations are in no way affected by their internal revolutions in government. Political forms may be altered, different persons or families may be called to the administration, but under every change that occurs, the new government succeeds to all the obligations, as it does to all the duties, of the old one, or, in other words, the nation, though it has changed its rulers, continues to be bound by its own acts. If this were not the case, a nation by changing its rulers, or its form of government, could at any time release itself from all its engagements, a supposition too absurd to be refuted.

* * * * *

No act of the nation can discharge it from this duty, except the fulfillment of it. These principles are recognized by the great writers on international law, &c.

Eodem, vol. vi, page 380, No. 448.

Extract from a letter of the Chevalier Huygens (minister of the Netherlands in the United States) to the Secretary of State:

WASHINGTON, November 11, 1826.

From the commencement of the relations between the United Provinces of the Netherlands and the United States of America, founded and stipulated by the treaty of 1782, and faithfully maintained until the war of Europe, and, in fine, the invasion of the United Provinces of the Netherlands by a foreign power *suspended* their happy re-

lations, the American flag was there treated on an equality with the national flag, which enjoyed a perfect reciprocity in the United States.

The desire of His Majesty the King of the Netherlands to favor and extend the navigation and commerce between his kingdom and the United States is well known, and of the sincerity of his disposition the President cannot be in doubt. His Majesty has given unequivocal proofs of it from his coming to the throne to the time when Belgium was united to the kingdom of the Netherlands. His Majesty, without knowing the reciprocal disposition of the Government of the United States, admitted, without hesitation, the bases of the treaty of 1782, and caused them to be applied to the navigation and commerce of the United States. The Americans were placed immediately in the position of the most favored nation.

No. 316.

Mr. Fish to Mr. De Westenbergh.

DEPARTMENT OF STATE,
Washington, April 9, 1873.

SIR: I have read your notes of the 8th and of the 17th of March last, and the inclosures of the latter, with the care and attention which I desire to give to everything written under the instructions of your government.

By selecting and separating a particular fact in history from the other facts and circumstances with which it is connected, and thus considering it in an isolated form, it is possible to receive entirely erroneous impressions. Such an impression seems to have been formed by you in consequence of a partial consideration of the short extracts from the voluminous correspondence conducted between Holland and the United States after the close of the wars of Napoleon, which are inclosed in your note of the 17th of March.

A brief review of the history of the commercial relations between the two countries will show how erroneous this impression is.

The wise founders of this Government, even before the national independence was achieved, recognized the importance to the new nation of cultivating friendship and commercial intercourse with the Netherlands; and their advances in this direction met with an equal consideration at the hands of the States-General. The treaty of 1782 between the two powers is declared to be made "for establishing the most perfect equality and reciprocity, reserving withal to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages."

For this purpose it was mutually agreed that each should enjoy for its subjects and citizens in the ports or territories of the other all rights, liberties, privileges, immunities, and exemptions in trade, navigation, and commerce which are or should be accorded to the most favored nations by the other, and that the duties or imposts imposed by each upon the subjects or citizens of the other were not to exceed those which were or might be imposed upon the citizens or subjects of the most favored nations. In other words, it was agreed that the rights of each in the territories of the other in these respects should be measured by the largest liberties accorded to the most favored nation.

The power with which the United States contracted these relations is described in the treaty as "their High Mightinesses the States-General of the United Netherlands." In a circular letter from their high mightinesses, addressed to the States of the United Provinces, dated the 10th of February, 1793, they describe themselves as "a pacific re.

public," and their principal magistrate is styled by them "the Stadtholder of the United Netherlands, of which he is not the sovereign, but an illustrious personage, attached to this republic by eminent dignities, with which he is invested under the sovereignty of the States of the provinces, the union of which represents the sovereignty of the confederation."

Hostilities between the United Provinces and France broke out in 1793, and continued with varying fortunes until December, 1795, when the Stadtholder abandoned the country. Another form of republican government was established over what was substantially the same territory, which was styled at first the Republic of the United Provinces and afterward the Batavian Republic. The revolutionary government came into complete possession of political power, so far as related to foreign powers, and was recognized by many of the other powers, among whom were the United States. It was recognized by Great Britain in the treaty of Amiens, to which it was a party.

Subsequently this republic became a monarchy, with a Bonaparte as king, and this monarchy in a few years disappeared in its turn, and the whole territory of the old seven United Provinces was incorporated into the French Empire, and disappeared as a separate nationality.

On the abdication of the Emperor Napoleon the allies entered into a secret treaty at Paris, in which it was agreed that the establishment of a just balance of power in Europe required that Holland should be so constituted as to be enabled to support her independence, and that therefore the countries comprised between the sea, the frontiers of France and the Meuse, should be given up forever to Holland.

In the following year this secret article was carried into effect in the congress at Vienna. The sixty-fifth article of the general treaty of all the powers and the first article of the particular treaty respecting the Netherlands, alike provide that the old United Provinces of the Netherlands and the former Belgic provinces, and certain other countries therein designated, should form, under the sovereignty of the house of Orange, the kingdom of the Netherlands. In conformity with their practice to recognize *de-facto* governments, the United States recognized this political change and entered into diplomatic relations with this new government.

During these frequent political changes, and mainly during the last two years of the reign of Louis Bonaparte, several vessels of the United States and their cargoes were seized and condemned or confiscated in the ports which had before then formed the territorial domain of their high mightinesses the States-General. When peace was restored, the United States, who had not been parties to the dismemberment or to the re-organization of continental Europe, made application to the government of the house of Orange for compensation for the injuries which their citizens had suffered in this way. The instructions to make these representations were dated the 9th of May, 1815, before the din of war had ceased.

A long discussion ensued, conducted in Holland, and extending from 1815 to 1820; but before considering it, in order to preserve a chronological sequence of events, I must refer to certain events which took place in Washington in 1815 and 1816, and which were referred to in my note to you of the 19th of February last.

The negotiations at Washington were commenced by a note from Mr. Changuion, the then Dutch minister, to Mr. Monroe, the then Secretary of State, dated the 24th of February, 1815, in which he transmitted "the first overtures which he was instructed to make in order to open negotiations for a treaty of amity and commerce," and proposed "as a base

for the new treaty to be concluded the text of the old treaty concluded in 1782, with the exception of the changes made necessary by the actual circumstances."

Mr. Monroe replied to this on the 15th of April, 1815, thus: "The treaties between the United States and some of the powers of Europe *having been annuled by causes proceeding from the state of Europe for some time past*, and other treaties having expired, the United States have now to form their system of commercial intercourse with every power, as it were, at the same time. * * * You have proposed to form a new treaty. To this the President has readily agreed. * * * I have assured you of the willingness of the President to make the ancient treaty between our countries *the basis of the proposed one.*"

Not long after the receipt of this letter Mr. Changuion was recalled, and after the lapse of some months Mr. Ten Cate replaced him. One of his early acts was to address a note to the Secretary of State, (April 4, 1816,) in which he said that he "conceived it proper to communicate to Mr. Monroe the intentions of the King, his master, respecting the overtures made by Mr. Changuion for the purpose of consolidating the commercial relations between the countries *by a renewal or a modification of the treaty of commerce of 1782.*"

Mr. Monroe, on the 17th of August, 1816, answered this note. In his answer he says: "Mr. Changuion having intimated, by order of his government, that the treaty of 1782 was to be considered, in consequence of the events which have occurred in Holland, *as no longer in force*, and having proposed also to enter into a new treaty with the United States, this Government has since contemplated that result. It is presumed that the former treaty *cannot be revived* without being again ratified and exchanged in the form that is usual in such cases, and in the manner prescribed by our Constitution."

To the note containing this explicit declaration Mr. Ten Cate returned a long reply on the 16th of September, 1816. As this reply undoubtedly exists in the archives of the legation of His Majesty the King of the Netherlands, in Washington, I content myself with saying that it does not controvert the formal statements of Mr. Monroe. I give the extract which seems most directly to bear upon the point under discussion: "*His Majesty will undoubtedly be disposed to enter into the views of the American Government with regard to the consolidation by some means of the commercial relations between the two states; but in expectation of these happy results His Majesty may take those measures, on the other hand, which appear best adapted to the circumstances of the moment, and to the interests of the navigation and commerce of his subjects.*"

Thus the status of the treaty of 1782 was apparently disposed of in Washington in accordance with suggestions which the correspondence shows originated in Holland. This disposition would probably have been regarded as final had not the Dutch government, in the discussions which took place soon after in Holland, denied its liability for the claims already referred to, and asserted, as the ground of discharge from responsibility, that the treaty of 1782 was not in force in Holland at the time when the alleged injuries took place.

Mr. Monroe had by this time become President, and Mr. John Quincy Adams had succeeded him as Secretary of State. The latter, acting presumably under the directions of the former, finding that the concessions to the wishes of the Dutch government which the United States was willing to make in 1816 were to be turned in 1818 to the prejudice of citizens of the United States, who had suffered grievous injuries in Holland, endeavored to re-open this question.

It was in this endeavor that the instructions which you have quoted were written by Mr. John Quincy Adams. They are dated the 10th of August, 1818, but are erroneously printed under the date of August 10, 1824.

The contention of the United States in this correspondence respecting the treaty of 1782, and respecting the continuity of the political organization with which it was made, is stated concisely in the extract which you have given from this dispatch of Mr. Adams, and I therefore quote it again: "*The rights and obligations* of a nation [the italics are Mr. Adams's] in regard to other states are independent of its internal revolutions of government. * * * On what other ground is it, indeed, that both the governments of the Netherlands and of the United States now admit that they are still reciprocally bound by the engagements and entitled to claim from each other the benefits of the treaty between the United States and the United Provinces of 1782. If the nations are respectively bound to the stipulations of that treaty now, they were equally bound to them in 1810, when the depredations for which indemnity is now claimed were committed; and when the present King of the Netherlands came to the sovereignty of the country he assumed with it the obligation of repairing the injustices against other nations which had been committed by his predecessors, however free from all participation in them he had been himself."

It is understood that the Dutch government denied these propositions.

The Baron de Nazel, in his letter of the 14th of June, 1819, to Mr. Everett, speaking of the union of Holland to France, says, "*The political existence of Holland was then terminated* ; and again, it may easily be shown that *Holland had ceased for a long time to form an independent state*, under a government acting for itself and responsible for its conduct." Again, in the same note, he says, "*The principle that the present government of the Netherlands is responsible for all the acts of the preceding governments from 1795 to 1813, is one which the King cannot admit without restriction*. If it might be admitted in regard to a succession of legitimate governments, it could not be in regard to a government established by violence, and which was not itself responsible for the acts to which it was forced by a foreign usurper; that the political nullity of this government had long been a matter of public notoriety." This was understood to mean that there was no recognized responsibility in the new government for any acts of the governments of Holland which existed from 1795 to 1813, a period of eighteen years. Unless it means that, it has no meaning.

Again, the Baron de Nazel, in a note to Mr. Everett, dated the 4th of November, 1819, contends, in answer to a citation made by Mr. Everett from Puffendorf, that the incorporation of an independent state into the territorial domains of another power as a province of that power, works a dissolution of the old body-politic. Referring to the citation he says: "It is wished to use it in proof of the position that a nation is not affected by the changes of the government, and cannot be destroyed but by the dissolution of the body-politic. Puffendorf plainly excepts the case of a state that has become *the mere province of another*, and this case is precisely that of Holland, by its incorporation with France."

Finding the government of the Netherlands firm in denying the continuing force of the treaty of 1782, the then president directed instructions to be sent to the minister of the United States, at the Hague, not to press the claims further. They were dropped and most of them were subsequently, in conformity with the suggestions of the Dutch govern-

ment, presented for payment by France under the treaty of 1832, and were allowed and paid. And thus the opinions of the Dutch government respecting the treaty of 1782, as officially conveyed to Mr. Monroe by Mr. Changuion in 1815, were finally concurred in by the United States, and the question disposed of, as it was supposed, forever.

The United States found less difficulty in accepting the Dutch views in regard to the dissolution of the old body-politic, which was in existence in 1782, as they found the new body-politic differing from the former one in territory, in name, and in form of government. In place of the republic of the United Provinces, they found the monarchy of the Netherlands; in place of the united territories of the high mightinesses, they found the domains nearly doubled by the addition of Brabant and Flanders and part of Germany; in place of a homogeneous people, with united historic associations, they found a political body, avowedly created by the great powers of Europe out of elements that did not exist in a national organization before 1815, for the purpose of preserving a fictitious balance of power. When they found this new body-politic denying (and persisting in the denial) that it was the same body-politic which had existed under another form in the Batavian Republic, and in the Bonaparte kingdom of Holland, the United States accepted this view.

In the opinion of the President, this correspondence between Mr. Monroe and Mr. Changuion, taken in connection with the subsequent action of the Dutch government in denying that the treaty had any valid operative force during the long period of eighteen years, when its existence would have been of advantage to the United States, and also in connection with the acquiescence of the Government of the United States in that action, and its submission of the rejected claims for compensation from France, places beyond doubt the fact that the treaty of 1782, for a period of over fifty years, has been mutually regarded as no longer in force.

For a long series of years Holland was not in a condition to execute her part of the engagements of that treaty. During this long period there was none of that reciprocity of advantages which is the essence of treaties of amity and commerce, but all that the treaty engaged on the part of Holland toward the United States was withheld and denied by the government which controlled her, which government, nevertheless, had the attitude of separate and independent existence, until finally her existence as a state was extinguished by her actual incorporation into France as a part of that empire.

Even if there were not this overwhelming proof of the intent of both governments I could not concur with you in the opinion that the restitution of this treaty would be confirmed by the doctrine of the right of postliminary. That right belongs to the state of war, and its application is confined to the parties belligerent, or, at the utmost, to them and their allies, and can accrue only within their territory, or as between them. It cannot be enforced in neutral states, because the neutral is bound to consider each belligerent as equally just in his position.

In the wars from which Holland suffered so severely during the latter part of the last and the beginning of the present centuries, the United States were neutral. It would be an extension of the doctrine which you invoke beyond any authority which I can find to apply it to a power which had maintained the position which the United States observed toward Holland and France during the long contest. I fail to find it anywhere stated that on the conclusion of a peace by which a conquered country has regained her independence, the ancient treaties of that

country with other powers are thereby necessarily revived. Indeed, the course pursued by Holland and Denmark in the treaty of July 10, 1817, whereby the parties agreed that the stipulations of the treaty of commerce between them of 1701 should remain in force until there should be an arrangement for its renewal, would seem to show that in their joint judgment such was not the public law in 1817.

Happily, however, the unmistakable accord of the United States and Holland respecting the treaty of 1782, renders further discussion of this point unnecessary.

Upon the pacification of Western Europe in 1815, and the creation of the kingdom of the Netherlands, the United States, finding their commercial treaties with the states in Europe which had been at war at an end, provided by legislation to meet the necessities of the case, and for the establishment of reciprocal freedom of commercial intercourse with those states. By an act passed on the 3d day of March, 1815, they abolished all discriminating duties on vessels and on goods, the produce or manufacture of any foreign nation, imported into the United States in the vessels of those foreign nations which might abolish discriminating or countervailing duties to the disadvantage of the United States.

This act subsequently became the subject of some correspondence between the two governments. A negotiation was carried on at the Hague, in which both parties endeavored to agree upon a new treaty, with the old treaty of 1782 as the basis; but it failed from causes which it is not necessary to dwell upon. It is worthy of note in this connection that after the objections to the Dutch contention concerning the treaty of 1782 had been withdrawn in 1820, Mr. Adams, referring to these unsuccessful negotiations, instructed Mr. Everett (August 9, 1823) that "the act of 1815 was an experimental offer, made to all maritime nations. It was in the course of the same year accepted by Great Britain, confirmed in the form of a convention. A similar effort was made with the Netherlands in 1817, but without success; *but the principle of equalization was established by corresponding legislative acts.*"

It is evident from this that the officers of the United States had reason to think that the commercial relations of the two countries at that time were regulated not by treaty, but by reciprocal legislation, and that the United States desired to have the basis of that legislation the principle of equalization. Indeed, as early as the 5th of March, 1818, Mr. Adams informed Mr. Ten Cate that "notwithstanding the termination of the conferences between the plenipotentiaries of the two governments without succeeding in the object of their meeting by the conclusion of a new treaty of commerce between the two nations, the desire of the Government of the United States is not the less earnest that the commercial intercourse between them may be regulated by principles of perfect reciprocity, and tending to promote the most cordial harmony and friendship between them."

Reciprocity and equalization to be achieved by legislation, were at that time the American solution of perfect commercial relations between the two nations.

I am not aware that any Dutch official took exceptions to this plan, or asserted that the treaty of 1782 was in force with the "most favored nations" plan as its basis. Even Mr. Chevalier Baugeman Huggens, in his note of November 11, 1826, quoted by you, asserts that the provisions of the treaty were "suspended," (Baron de Nazel claimed that the suspension lasted eighteen years,) and the whole tenor of Mr. Huggens's note shows that he felt that there was no mutual act of the two govern-

ments by which it could be shown that the suspension was set aside and the treaty revived. Else why does he speak in this note of "the existence or *the renewal of the treaty of 1782*," and why does he say that "it would certainly be more advantageous to the two nations to leave *that precarious legislation and be bound by liberal and reciprocal conventions?*"

In 1839 the parties left "precarious legislation" and became "bound by a liberal and reciprocal convention." In this instrument, which is declared to be made because the parties are anxious to regulate the commerce and navigation carried on between the two countries in their respective vessels, it is provided that goods and merchandise of whatever origin, imported into or exported from the ports of one country from or to the ports of the other, (those of the Netherlands being confined to Europe,) shall pay no higher or other duties than those levied on like goods and merchandise imported or exported in national vessels; that bounties, drawbacks, or other favors in either state on goods exported or imported in national vessels shall be also granted on goods directly exported or imported in vessels of the other country to and from the ports of the two countries; and that tonnage and harbor dues, and light-house, salvage, pilotage, quarantine, or port charges shall be imposed in each country on the vessels of the other only as imposed in like cases on national vessels.

Again, in 1852, the two powers "*being desirous of placing the commerce of the two countries on a footing of greater mutual equality*," agreed to extend the provisions of the treaty of 1839, so that its provisions should include also goods and merchandise of whatever origin, imported or exported from or to any other country than the United States or Netherlands, respectively, with a similar extension as to bounties, drawbacks, &c.; so that now, by treaty as well as by legislation, the commerce and trade of each of the two countries are placed upon that footing of equality with those of the other, and upon that basis of complete reciprocity, which both parties have ever professed to desire, and which the United States sought to attain by reciprocal and equalizing legislation. It is worthy of remark that the negotiators of the treaty of 1782 declare that it is concluded with the object of "*establishing the most perfect equality and reciprocity for the basis of their agreement*," while the negotiators of the treaty of 1852 declare that the two powers were then desirous of placing the two countries on a footing of *greater mutual equality*. If the treaty of 1782, creating "the most perfect equality," was in force in 1852, why should the parties have thought it necessary to provide for an equality greater than the most perfect one already existing? To ask such a question is to suggest the answer.

It was because the treaty of 1782 had long ceased to be operative, and because the mutual commercial relations of the two powers which each desired to increase, and to remove from the influence of fluctuating legislation, demanded further protection, that the parties concluded the successive treaties of 1839 and 1852. And in these instruments, influenced by the liberal views which now prevail, the parties agreed to measure the equality and the reciprocity which they desired to give each to the other, not by the favors which they might grant to any other, even the most favored nation, but by the impositions to which the national vessels of each were subjected in its own ports. It seems to me that an agreement which goes beyond this just measure and which aims to give to the vessel under the foreign flag a preference over a vessel which carries the national ensign, is founded in injustice, and when en-

forced can only tend to decrease the friendliness and cordiality which commercial treaties should aim to foster. Happily no such engagement exists between the United States and the Netherlands.

The laws of the United States impose a tonnage tax of thirty cents per ton on the first entry or clearance, according to priority of a vessel from or to the West India Islands, the British provinces of North America, Mexico, or any port or place south of Mexico, down to and including Aspinwall and Panama, or any port or place in the Sandwich Islands, or the Society Islands, provided that no tonnage tax has been paid on such vessels within one year. They also impose a tax of the same amount on vessels engaged in commerce between the United States and foreign ports or places other than those specified above, to be levied on the first entry, and thereafter on each entry made after the expiration of a year from any previous payment of the dues.

All vessels of the commercial marine of the United States are subject to and pay this tax. The commercial marine of Holland, being placed by treaty on the same footing with the commercial marine of the United States, is subject to no other or higher duties than these, but is subject to these tonnage dues so long as they shall continue to be imposed by law upon the vessels of the United States.

If, as I flatter myself has been shown, the treaty of 1782 is no longer binding on the parties, their commercial relations are now regulated by the treaties of 1839 and 1852, only. Neither of these instruments, however, promises to place the vessels of Holland in the ports of the United States on the same footing as those of the most favored nation. When they were concluded, Holland probably supposed that she had a sufficient security against any discrimination in the stipulation that her vessels were to have the same treatment in our ports as our own. At that time no tonnage duties were levied in the ports of the United States. Events have since occurred, however, which, in the judgment of Congress, made such a change necessary.

I take, &c.,

HAMILTON FISH.

No. 317.

Original handed to Secretary of State by the minister from the Netherlands April 10, 1873.

[Translation.]

Report of a conference between Baron Gericke d'Herwijnen, minister of foreign affairs, and the Japanese ambassadors Iwakura and Ito, held at the foreign office, at the Hague, March 4, 1873.

Mr. Van der Hoeven, formerly minister resident in Japan, and Mr. Von Weckherlin, recently appointed to the same post, were present at this conference.

After the customary compliments, the minister of foreign affairs opened the conference by informing his excellency Iwakura that he had hastened to accede to the desire manifested by him to have an interview, and that he was prepared to listen to any communications which he might have to make.

His excellency Iwakura replied that he did not doubt that the government of the Netherlands had been apprised by its representative in Japan of the important political changes which had taken place there within a comparatively recent period; that the government of the Tenno had, therefore, deemed it necessary to send an embassy to America and Europe for the purpose of strengthening the friendly relations which exist between Japan and the governments with which that country had concluded treaties; that this was the principal object of the mission which had been confided to him, but that he had desired to avail himself of that occasion to learn the opinions of the different cabinets in regard to a revision of their treaties with Japan, so that he might, on his return, inform his government in relation thereto.

The minister of foreign affairs replied that he had been made aware by the dispatches of the minister resident in Japan, of the recent changes in that empire; that he appreciated the feeling which had prompted the sending of the embassy; that he was happy to see it in the Netherlands, and was ready for an interchange of views in regard to the revision of the treaties with the Japanese ambassadors, although he regretted that they were not invested with more ample powers. He reminded them that the proposition to revise these treaties emanated from the Japanese government; that the Netherlands were not, in the main, dissatisfied with the existing treaty, but that in order to comply with the desire of the ambassadors, he would refer to some points which, in his opinion, needed improvement.

He felt obliged, however, to begin by remarking that he could not enter into details since that would be of no practical utility, the ambassadors having stated that they were not invested with the full powers necessary to conclude a new treaty. The present conference must therefore be limited to general considerations.

The minister especially desired to remark that any arrangements which might in future be made should bear that character of stability which is so desirable in commercial matters, and that the necessary precautions must therefore be taken against anything like arbitrariness or instability.

The Japanese ambassadors said that they accepted that principle.

The minister then remarked that it was desirable to have Japan more fully opened to foreign commerce.

He thought, especially, that relations between foreigners and Japanese should be favored. This end might be attained by granting permission to foreigners to travel in the interior and to transact commercial business with the inhabitants. These foreigners should, of course, be under the control of their consuls. The government of the Netherlands would even prefer this system to the opening of new ports. If, however, in addition to granting such facilities for trade in the interior of the country, the Japanese government should also open new ports to commerce, the government of the Netherlands would, of course, be very much gratified, and would regard the adoption of such a measure as a new proof of the friendly sentiments of Japan toward foreigners.

Mr. Iwakura promised that he would, on his return, inform his government of the desire expressed by the government of the Netherlands.

The minister of foreign affairs then referred to a subject to which he felt obliged to call the attention of the Japanese government.

This point had also, if he was not mistaken, been treated of by the other governments with which the ambassadors had been in communication; he referred to the position of the Christian inhabitants of Japan.

News concerning persecutions to which these Christians are exposed had recently reached Europe, and had everywhere produced a painful impression.

The Netherlands, where religious liberty had existed for centuries, naturally attached great value to a more tolerant course of conduct toward these Christians.

The minister took the liberty of commending this subject to the particular attention of the Japanese government.

He thought that he might do this with the more freedom, inasmuch as the Netherlands occupy an independent position in relation to this question, owing to the fact of their having no missionaries in Japan, and therefore not being obliged to interpose in their favor.

The ambassadors promised that they would commend this matter to the attention of their government on their return, and gave information of an encouraging character.

The minister of foreign affairs then spoke of the clause contained in the fifth article of our treaty with Japan, according to which Japanese courts are to be opened to Netherlands for the purpose of enabling them to enforce their just claims against Japanese subjects. In the opinion of the minister, corroborated by that of Mr. Van der Hoeven, there are, properly speaking, no courts in Japan. When a subject of the Netherlands has a claim against a Japanese, diplomatic or consular interference usually becomes necessary. The matter is then settled executively. Justice must naturally suffer under this system, and this is especially the case when complaints are made against the communal administrations or against the Japanese government itself. The minister therefore thought that he might recommend to the Japanese government the separation of the executive from the judicial power.

Mr. Iwakura replied that the Japanese government was aware that its judicial system was defective, but said that it was difficult to effect in a short time so radical a re-organization as that of the separation of the executive from the judicial power; that, nevertheless, a kind of independent court had been established some months previously, and that this was a proof of the desire of the Japanese government to reform its judicial system. He promised that he would likewise recommend this point to the attention of his government on his return to Japan.

The minister of foreign affairs then stated that so far as the Netherlands were concerned, there were no more points of a general nature with regard to which an interchange of views with the ambassadors seem to him necessary.

After having deliberated with each other for some time, the ambassadors said that, for their part, they desired to speak of the question of the Simonoseki indemnity.

The minister of foreign affairs replied that he could not refrain from expressing his astonishment at hearing a question alluded to which, properly speaking, was, or at least ought to be, a question no longer. An extension of the time allowed for this payment had repeatedly been granted to the Japanese government. That government had promised three years ago that the debt should be paid on the 15th of May last, and that no further delay should be asked for. The government of the Netherlands had seen with surprise that, only eight days before the time appointed, the Japanese government had sent a communication stating that the embassy was instructed to take measures in Europe for the procurement of a further extension. It was to be expected that the engagement contracted by the Japanese government would be more punctually fulfilled, and that for its own interest it would have desired to

avoid placing itself in a position which prevented it from negotiating with all powers on the same footing.

The ambassadors replied that they were obliged to act in obedience to the orders which they had received from the Emperor, and the minister said that was evident, but that he had, nevertheless, thought that he could not refrain from making the observation that he had made.

The ambassadors then remarked that they had prepared a memorandum in relation to the Simonoseki indemnity; they requested the minister to give his attention to this document, and expressed the wish that, for the present, a further extension might be granted.

The minister promised them that he would examine this memorandum, and that he would send them a written reply. Referring to the letter addressed by the Japanese government to the minister resident of the Netherlands, containing the promise to abide by whatever should be agreed upon between the Japanese ambassadors and the government of the Netherlands in relation to the Simonoseki indemnity, he desired to know whether the Japanese government was prepared to fulfill its engagements in case the government of the Netherlands, as was by no means unlikely, should be unable to admit the force of the arguments advanced in the memorandum.

The ambassadors replied that they would, on their return to Japan, inform their government concerning what they had done in regard to the Simonoseki indemnity, and that they begged the government of the Netherlands to grant them a further extension, at least until that time. They recognized, moreover, in the most solemn manner, the obligation of Japan to pay the amount which was still due in case the government of the Netherlands should persist in demanding payment.

The minister of foreign affairs said that he would bear this statement in mind. He renewed his promise of a written reply to the memorandum, and ended the conference after having exchanged a few words of courtesy with the ambassadors and having informed them of the latest news from Japan, which had just been received at his department.

No. 318.

Mr. Westenberg to Mr. Fish.

[Translation.]

LEGATION OF THE NETHERLANDS,
Washington, May 31, 1873. (Received June 3.)

MR. SECRETARY OF STATE: The relations between the government of the Netherlands and the empire of Atcheen, situated in the northern part of the island of Sumatra, in the Indian Archipelago, have for a long time been growing more and more complicated.

The conventions which had been concluded were not observed by the government of Atcheen, which, in spite of all representations, gave constant evidence of bad faith.

The necessity of maintaining order and security in those regions, of caring for its own safety, of repressing the slave-trade, of protecting commerce and navigation against the depredations and acts of piracy which the Atchinese were incessantly committing, and of putting an end to a state of anarchy and disorder which, fomented by fanatical parties, threatened to become still more widely extended, and to jeopardize the internal peace of the possessions of the Netherlands and of the

states in alliance with the same—all this, several times induced the government of the Netherlands to remonstrate with that of Atcheen, which not only paid no attention to this, but even continued to make or tolerate frequent incursions into those states which were in alliance with or tributary to the Netherlands.

As these acts of violence and piracy became constantly more frequent, the government of the Netherlands, after having exhausted all means of persuasion, found itself obliged, in the interest of its own security, as well as in the great interests of commerce and civilization, to have recourse to force. Before proceeding thereto, however, the government of the Netherlands once more asked explanations of the Sultan of Atcheen, and requested him to enter into a formal agreement to take care that acts calculated to disturb the peace and to endanger navigation and commerce, should no longer be committed. The government of Atcheen having refused to give any explanations, or to enter into any agreement, the government of the Netherlands was forced to a rupture of relations.

A Dutch squadron was sent to Atcheen, and the Dutch commissioner, Mr. Nieuwenhuygen, sent the manifesto of which I have the honor to inclose a translation, to the Sultan of Atcheen. Although I have already had the honor to inform your excellency of this verbally, I take the liberty to repeat it in writing now that I am able to transmit to you the text of the Dutch manifesto, above referred to, which I have just received, in the belief that it may seem interesting to the American Government.

The government of the Netherlands, highly appreciating the neutrality which has been so faithfully observed by the Government of the United States in this matter, on which, however, it relied in view of the friendly relations existing between it and the United States, has instructed me to offer its thanks therefor to your excellency, and to add the assurance which has already been given, that all American interests shall, in case of necessity, be the object of its particular solicitude, and receive its most efficient protection.

Be pleased, &c., &c.,

WESTENBERG.

[Inclosure—Translation.]

The commissioner of the government of the Dutch East Indies before Atcheen :

Whereas it is the duty of the government of the Dutch East Indies to protect the general interests of commerce and navigation in the Indian Archipelago ; and

Whereas these interests suffer constant detriment from the depredations, the internal disorders, and the acts of hostility of the states which acknowledge the authority of the empire of Atcheen, some of which have sometimes even invoked the protection of the government of the Dutch East Indies ; and

Whereas the repeated representations of the said government, tending to put a stop to these depredations and disorders, and to establish friendly and durable relations between it and Atcheen, have always proved unavailing in consequence of the unfriendly disposition and complete indifference of the government of Atcheen, and in consequence of its inability to maintain order and peace within the limits of its dominions ; and

Whereas these efforts have even been met by the greatest duplicity, on a recent occasion, when the government of the Dutch East Indies, animated by the most friendly sentiments and with the most peaceful intentions, entered into more intimate relations with Atcheen ; and

Whereas, when satisfactory explanations were asked for on this subject, on two occasions, by official communications from the commissioner, dated the 22d and 24th, the Sultan of Atcheen not only gave no explanations, but even offered no denial of the acts complained of, and, moreover, proceeded in the most open manner to prepare for

war, so that there can no longer be the slightest doubt with regard to the desire of the Sultan to insult the government of the Dutch East Indies and to maintain the hostile attitude assumed by him; and

Whereas by these acts the government of Atcheen has rendered itself guilty of a violation of the treaty of commerce, peace, and friendship, concluded between it and the government of the Dutch East Indies, March 30, 1857, and it therefore becomes evident that no dependence can be placed upon the good faith of the said government of Atcheen, and—

Whereas under these circumstances it is impossible for the government of the Dutch East Indies to secure, otherwise than by rigorous measures, order and tranquillity in the northern parts of Sumatra, as is required both by the general interests of commerce and its own security:

Therefore the aforesaid commissioner of the government of the Dutch East Indies does hereby, in virtue of the powers with which he has been invested by the said government, declare war against the Sultan of Atcheen, which fact, by the present manifesto, he brings to the knowledge of all whom it may concern, reminding all of the consequences which may arise therefrom, as well as of the obligations which exist during a state of war.

Done on board of the steamer of the royal navy, Citadel of Antwerp, before Great Atcheen, on Wednesday, the 26th day of March, 1873.

NIEUWENHUYGEN.

XXV.—NICARAGUA.

No. 319.

Mr. Riotte to Mr. Fish.

[Extract.]

No. 112.]

UNITED STATES LEGATION,
Managua, May 27, 1872. (Received July 3.)

SIR: I beg to acknowledge the receipt of your dispatch No. 71, of 18th ultimo, together with the inclosed four printed copies of correspondence, which will be preserved as instructed.

While war is raging along the northern border of this republic, and President Medina's authorities and adherents are flocking to her soil, there has, suddenly, a speck of a war-cloud risen also in the southern sky. In my dispatch No. 110, of the 9th instant, after reporting the failure of the Costa Rican mission, I ventured to predict that it would lead to a decided coldness between the two governments. I was but so far mistaken then as to undervalue the temper of President Guardia's administration, which, indeed, not satisfied with coldness, applied, wonderfully urgent, to the honor of this country—as the Nicaraguans have it—and to her dearest material interest, the exit to the Atlantic, a deadly blow.

I beg to invite your attention to the inclosed (No. 1) printed copy and translation of an order of a certain "Juan Carrie." There is no doubt in my mind as to his having acted under strict orders from San José. I know the man perfectly well; he is a common, illiterate Frenchman, altogether incapable of drawing up such a document, though he makes out to issue it on his own responsibility, whyfore is very conspicuous.

In order to fully understand and appreciate the significance of it, I must be permitted to state some facts and to inclose (No. 2) plot of the port and bay of San Juan del Norte. I have copied from an official map.

Pursuant to article 2 of the treaty of April 15, 1858, (Cañas-Jerez,) the entire right bank of the main channel of the San Juan River, from Castillo Viejo down, became Costa Rican territory. This included the Colorado River in its entirety; *i. e.*, from its bifurcation to its mouth, and all the land between the two forks; *i. e.*, between the main channel of the San Juan and the Colorado River, together with the long and narrow sand-spit intervening between San Juan Bay and the sea, and culminating in what is called *Punta Castillo*, or *Puntas Arenas*. According to article 4 of the same treaty, the bay of San Juan was to be common to both republics, and it contains moreover two stipulations expressive of the anxiety of the contracting parties to secure to Nicaragua the advantage of unobstructed access from and to the port of San Juan. The deterioration of said port since that time has been going on at such rapid rate, by the absorption of the waters of the upper San Juan into the Colorado, (a survey made about five years ago showed that the latter carried off nine-tenths thereof,) that during the last dry season the principal entrance to the port (near B of the plot) became absolutely impracticable, the bar extending from Punto Castillo to the main. About the same time, however, the pent-up waters of the bay effected a break through the narrow spit aforementioned, about where point A on the plot is laid down, and this passage was used, under the name of *Los Portillos*, as entrance to and exit from the port, or if temporarily the surf there was too dangerous, then also the Colorado River would be made use of for that purpose.

Now, both Colorado River and said land-spit forming part of the Costa Rican territory, that government seems desirous of imitating the narrow-minded policy of Holland with regard to the Rhine, of the Spanish governor of Louisiana with reference to the Mississippi, and of England regarding the Saint Lawrence, though she outstrips them in the abruptness and little consideration of her course. Costa Rica, while the ink of article 26 of the treaty of Washington is hardly dry—in the face of the constant and determinedly sustained polity of the United States, claiming for the riparian population of the upper course of a navigable river and its affluents free navigation, ascending and descending, from, to, and into the sea, *as a natural right*; in the face of the action of European nations acknowledging by treaties that right in the case of the Rhine and the Danube, and in the face of the unanimous declarations of all American nations—undertakes to shut out Nicaragua from what may be styled emphatically *her river*, which at the most outside portion of its ever varying delta has broken through a sand-bank, which only by a good straining of the word can be called territory, but which, in fact, is an uninhabited and uninhabitable spot, (our tars recently christened it Alligator Camp,) irretrievably at the mercy of the high winds and of the never-ceasing struggle between ocean and river. She does not limit herself to making police regulations upon the use of what she pretends her exclusive waters, but she broadly asserts that the goods imported and the products exported through Portillos to, respectively, from Nicaragua, (which passage may, and probably will, become useless by the rains already setting in,) must pay Costa Rica duties considerably higher than those of Nicaragua. If it is taken into account that full half of the entire commerce of the country would become tributary to that extortion, the intense excitement spreading over this country is easily explained. There seems little doubt that Costa Rica intends and expects to compel Nicaragua to consent, to use a favorite Napoleonic phrase, to a regulation of the frontiers in accordance with the natural limits and in accord with the honor and interests of

Costa Rica, and what she is still more after, so as to get a hold of, if not the entire line of, any possible inter-oceanic canal, at least a considerable portion of it.

During a conversation I had last night upon the subject with the President, he said, from several letters of Mr. Franco, in Paris, which he offered to show me, he felt sure that when some months ago the Costa Rican minister, Mr. Montufar, was in Europe he came to a secret understanding with Mr. Lefevre, of Franco-Lefevre canal-contract notoriety, (see my dispatches Nos. 65 i. f., 67 i. f., and 72,) and that in it Costa Rica * * * bound herself to get hold of the interoceanic canal lines, right or wrong, and that the late meeting at Rivas was the first act in the prosecution of that scheme. He stated further that at Rivas President Guardia taxed all his ingenuity to persuade him to join the Lefevre contract, but that he had told him plainly that both the government and people of Nicaragua coincided in the determination that in case a canal across the republic should prove practicable, then the United States and neither a European power nor its subjects should build and manage it.

He asked me whether, under the present circumstances, it did not seem to me judicious to dispatch an envoy to Washington, since Costa Rica had one there who, it was feared, would, particularly by working upon the members of the diplomatic corps, cause pre-occupation to spring up against Nicaragua. I told him he need not be uneasy as to that, since I knew the perfect independence of my Government of any influence from that quarter; and * * * I tried to dissuade him from this idea, telling him plainly that among the politicians I knew of no man in Nicaragua fit to be sent upon such a mission. He replied I was perfectly right, yet he knew a man, not a politician, fit for it, and him he was determined to send, namely, Mr. Emile Benard, of Granada. I forthwith withdrew my objection to the plan, in consideration of the person to be intrusted with its execution, the selection of whom does honor to Mr. Quadra's sagacity and liberality, and I will here, as indicative of the President's character, state his very words on that occasion, viz :

"You may rely I shall never send out ministers, as hitherto was the custom here, to get rid of an opponent or enemy, or to enrich at the public expense vile sycophants. I will strive to find the best man, of whatever position, race, or nationality he may be; and rather than to dispatch an incompetent man, I send none at all."

Mr. E. Benard is a merchant, of French origin, but born in this country; intelligent, energetic, progressive, public-spirited—qualities he showed to great advantage while mayor of the city of Granada. Part of his education he received at Amherst, Mass., and speaks English fluently. He has seen something of the world, and has turned it to his advantage, and is a friend and admirer of our people.

With the mail of the 25th instant this government has forwarded a remonstrance and protest to San José, but it hardly anticipates a favorable reply, and seems, if I may judge from Mr. Quadra's words, to rely altogether upon the good offices, or, if need be, the assistance of the Government of the United States.

I was careful to express no opinion on my Government's views or action.

* * * * *

I have, &c.,

C. N. RIOTTE.

[Inclosure.—Translation.]

*Juan Carrié to E. H. Hollenbeck.*CUSTOM-HOUSE GUARD OF COLORADO,
May 13, 1872.

The undersigned, chief of the guards established by the government of the republic of Costa Rica on San Carlos, Sarapiquí, and Colorado Rivers, being obliged to prevent the transit of natural productions or goods that may leave or enter the territory of the republic without previously complying with the prescriptions of the fiscal laws, I have to observe, and it being a fact that your steamers pass the Colorado River, importing and exporting fruits and goods without first soliciting permission from my government to do so, I consider myself bound to notify you that I deem the running of your steamers in the waters of the Colorado River, or any other point which crosses Costa Rican territory, as unauthorized and illegal.

I therefore comply with my duty in the said position in stopping your steamers from running on Colorado River as long as the duties which I am charged to levy are not paid for the introduction of goods, or as long as the license my government may grant is not submitted to me.

I hope that you will proceed, looking at what I have said, as you think best, adding, however, on my part, that if—what is not to be expected from your good conduct—the running of the steamers continues, I will, to cut it off, make use of the means at my disposal, giving information to my government, as I shall do now immediately, transmitting to it the present.

With all consideration, &c.,

JOHN CARRIÉ.

No. 320.

Mr. Riotte to Mr. Fish.

[Extract.]

No. 113.]

UNITED STATES LEGATION,
Managua, June 20, 1872. (Received July 18.)

SIR: Subsequent to my last dispatch of the 27th ult. upon the state of relations between Nicaragua and Costa Rica on the boundary and canal-route questions, the Official Gazette published a long appeal of Mr. Herrera from his fellow-negotiators, General Zavala, to the minister for foreign relations, and Mr. Rivas's reply. Of the latter, in which the principal points made by Mr. Herrera are incidentally mentioned, I beg to submit inclosed copy and translation, for the reason that it seems to state the position of his government on those subjects more distinctly, more fully, and with more fairness than any other document that emanated from the same source. It is my deliberate opinion that when Mr. Herrera *de facto* declined continuing the negotiations upon that broad and conciliating basis, and took so abruptly his leave the very day, without waiting for his enlarged instructions, whereof he was for weeks prating, and which, in the regular course of the mail service, were to arrive but two days later, he did so because he was from the beginning instructed *not* to come to an agreement short of an absolute surrender of Nicaragua to all and every Costa Rican demand, and feared, from the yielding disposition shown by this government, to have to spoil the game marked out for him at San José.

Whatever may be thought of Mr. Rivas's views on the regulation of the boundary, his fairness as to the canal cannot be gainsaid. In fact, I, for my part, do rejoice that Mr. Herrera, by his sudden withdrawal, frustrated the execution of those propositions. * * *

Costa Rica, on the other hand—so every day's experience is more fully persuading me—seems determined not alone to continue the game which in your dispatch No. 72 you have so correctly pictured.

It is most unfortunate that Nicaragua herself, led on by that fatal man, Mr. Ayou, when minister for foreign relations, took the first false step, giving, to some extent, color to the course adopted by Costa Rica. I beg here to refer you particularly to my dispatch No. 67, of February 4, 1871. Mr. Ayou's life ambition was bound up in the success of the Chevalier-Ayou contract. That success was contingent upon the approval of the contract by Costa Rica. When, after the ascendance of the dictatorial chair by Mr. Guardia, and the appointment of Mr. Montufar, the old enemy and inveterate rival of Mr. Ayou for the championship in diplomacy, the approval was refused, and an exchange of notes on the subject took place between those two men, it was the bitterest I ever read, and ended with a menace of war by Mr. Ayou, and its acceptance by his antagonist. Mr. Ayou then found, in the narrow-mindedness and weakness of President Guzman, a willing instrument to wreak his revenge upon Mr. Montufar, by convincing him that to secure to Nicaragua in future her proper free action on the canal, there was no remedy left but to declare the boundary treaty of 1858 null. Mr. Ayou, in his report to Congress, submitted, with some caution, that view, and Congress, as is its habit, too lazy to trouble itself with its single points, approved the report in a lump. By all kind of means, that view has been worked into the heads of this people, always prone for a quarrel and sharp practice, and never troubled with conscientious doubts, to such a degree that I really believe there is not a single person on the entire extent of the republic entertaining the other side of the question. The only man I have found who has at least doubts on its correctness is President Quadra. His honesty and good sense tell him that Nicaragua must abide by the treaty, and not touch the old sore of Guanacaste, but he says: "I am neither a lawyer, nor a diplomatist, or politician, and all those who are tell me that the treaty and the possession of Guanacaste by Costa Rica are not valid in law." I have frankly told him twice that I entertained a contrary view, and stated my reasons, as well in law as in equity, and laid before him all the facts, some of the most important of which were unknown to him.

* * * * *

Nicaragua I consider wrong on the boundary and the Guanacaste question; Costa Rica on her canal pretensions and her recent action in reference to the mouths of San Juan and Colorado Rivers. But these subjects are so intimately connected and intrinsically and artificially interwoven, that one cannot now be well solved without the other; and here it is Nicaragua, who, having made the first aggressive move, ought also be the first to retract it.

* * * * *

To enable you to argue the case with Mr. Bénard, if required, I will now state the reasons upon which this government and people deny the validity of the boundary treaty, of which, to that end, I inclose copy and translation.

They say:

1. When in 1858 the treaty was entered into, the constitution of 1838 was in force in Nicaragua. Article 2 thereof laid down the boundaries of the republic. A change in them, as involved by the treaty, consequently constitutes an amendment of the fundamental law, which, pursuant to article 194 of that instrument, can be effected only by two distinct approbations in two different congresses. The Canas-Jerez treaty

was approved by but one—that of 1858—and is, therefore, not binding on Nicaragua now. It is not denied that, in addition to that ratification, the ratifications were exchanged with quite unusual solemnity (see the translation) by the Presidents of the two republics themselves, assisted by their respective ministers for foreign relations; that it, later, was published, as a part of the public law of the republic, in the official organ, and that it was, faithfully and without caviling, complied with by Nicaragua for a period of thirteen years. Nor can it be denied that if there was, *quoad formam*, a cloud hanging over it, Costa Rica had neither caused nor any means of removing it. Nicaragua, by her own negligence or bad faith, (I have reason for believing by both,) created that cloud, and nothing to clear it away, as she was in duty bound. It would be carrying owls to Athens would I undertake to show before you, Mr. Secretary, why she, and she alone, is foreclosed from availing herself of that cloud.

2. The commissioners for the survey of the dividing line, (article 3 of the treaty,) have not been appointed, nor has ever a survey taken place. Now it seems simply incredible that such flimsy argument can be brought forward seriously by hosts of lawyers and statesmen, and be repeated by the press in all times. The survey was simply a measure of partial execution, which, if not otherwise stipulated, might or might not be resorted to without exercising any influence upon the substance and existence of the treaty. For thirteen years none of the two governments urged the appointment of the commission. This is equivalent to a tacit mutual understanding that hitherto they did not consider it of sufficient weight to have it attended to; but it seems unquestionable that either one of the parties may still any day demand the survey.

3. Most stress is laid by Nicaragua upon the fact that, according to article 10 of the treaty, the Salvadorian envoy took the treaty under the guarantee of his government, and that it never ratified his act. But it is not true, in fact, that said envoy warranted the entire treaty. He merely acted as mediator to it. His guarantee was restricted to “*lo estipulado en el articulo anterior*,” namely article 9, containing the prohibition of hostilities in time of war, in the port and river San Juan and on Lake Nicaragua. Mr. Negrete expressly declared that he had authority from his, the Salvadorian, government to do so, and both the Nicaraguan, as well as the Costa Rican negotiators, who, according to the preamble, had taken cognizance of his powers and found them sufficient, were satisfied with Mr. Negrete’s declaration, so that none of these republics could complain even if Salvador had disowned Mr. Negrete’s action, which she never did, or not complied with it, for which there was no opportunity. It is not known, and has to be seen if a case occurs, whether Salvador will consider herself bound by that declaration to an intervention or not. But in law it seems doubtless that, as between the original contracting parties, provided the ratification of the guarantee clause is not made a *conditio sine qua non* of the very existence of a treaty or contract, that treaty or contract is binding upon them, whatever may be the fate of the guarantee.

4. Finally, it is contended that the treaty, while transferring to Costa Rica territory use of waters, and navigation privileges, did not specify a consideration. If this were so, the remark would hold good that, according to Nicaraguan law, it is not necessary (as in the common law) to express the consideration; it is sufficient that it exist and may be proved. But it is not so. The treaty, in article 11, distinctly and discerned enough for any interpreter acting in good faith, acquainted with the circumstances under which it was concluded, states the consid-

eration. Costa Rica for two years had been straining every nerve to save Nicaragua (Nicaraguans retort: herself too) from the iron grasp of Walker, and had spent a large sum of money and sacrificed many lives in the attempt, for which, without presumption, she might have claimed indemnity. She had possession of a number of steamers taken from the filibusters; she held, right or wrong, the Nicaraguan forts on San Juan River. All this she gave up to Nicaragua by that article, under the designation of *creditos activos* (assets) and of reclamations for indemnity. It is true the stipulations of the article are mutual, but that they merely meant obligations on the part of Costa Rica, every Nicaraguan knows full well, though not one is upright enough to confess it. This disingenuousness of Nicaragua on this occasion is so transparent that any foreign power treating with her will do well to heed the precedent. The editor of the government organ, in an article published in the *Forvenir*, proclaimed it as a tenet of international law that treaty stipulations are to be observed only so long as they are advantageous or as the power is wanting to break them, and this outrageous sentiment was not only not rebuked, but seems to be accepted with general approval.

The old quarrel about the Costa Rican province of Guanacaste has also been trumped up again by Nicaragua on this occasion. It seems a well-established fact that, under Spanish rule, it formed a part of Nicaragua, though Mr. Montufar, in his late report to Congress, makes an ineffectual attempt to show that it belonged to Costa Rica. If that gentleman would peruse the old archives of Costa Rica at Cartago, he would find therein, as I did, the most incontrovertible evidence (whereof I still preserve extracts) of the error of his position. But, on the other hand, it is a matter of history that since 1824, without interruption, the province of Guanacaste formed an integral part of the republic of Costa Rica. Nothing has more embittered the feeling in Costa Rica than this eternal harping for the "lost brethren" by the Nicaraguans, keeping up in the minds of the inhabitants of that province an insecurity and uneasiness, the principal cause of its miserable condition. It is really too bad that this people, barely able to exercise its authority of one-third of its undisputed territory and incapable of making it felt over two-thirds thereof, should run riot after a distant, wretched province, separated from the bulk of the republic by high mountain ranges, inaccessible for six months in the year, and heedlessly provoke the enmity of a comparatively powerful neighbor. That hellish spirit of rapacious and inconsiderate conquest, into which the successors of Columbus degenerated, is still rife among these factions of the old greedy stem. In the same way as Nicaragua leers on Guanacaste, and would, if she had the power, take it to-morrow by war, without the remotest idea what to do with it after the conquest, so does Costa Rica covet all the territory down to the Golfo de Toros, even at risk of war with the United States of Colombia. What a very good fortune it is that these countries are so weak and assigned upon each other.

I am very sanguine that if, upon my Government's friendly advice, Nicaragua, with good grace, will retract her steps as to the boundary treaty and the province of Guanacaste, Costa Rica will also not hesitate to take back hers as to the navigation of "Los Portillos" and the Colorado River, which, aside from being against the customs of all nations, as I endeavored to show in my dispatch No. 112, are plainly in contravention to both the words and spirit of the very boundary treaty which she affects to uphold. (See arts. 6, in beginning, 4, 5, 9 and 10.) And then will come the proper time for these two republics to settle their future polity, for which Mr. Rivas's dispatch holds out so tempting a prize

as the partial or total political union. I must say, however, that I have no faith in negotiations or conferences among themselves alone.

* * * * *

I have, &c.,

C. N. RIOTTE.

[Inclosure.—Translation.]

Mr. Rivas to Mr. Herrera.

No. 113.]

MANAGUA, April 18, 1872.

MR. VICENTE HERRERA, &c., &c.

I had the honor of receiving your excellency's dispatch of the 10th instant, wherein you explain the reason for which the Costa Rican government lays claim, as natural boundaries, to San Juan River and Lake Nicaragua, and for intervening directly in the enterprise of the interoceanic canal, concluding with the observation that in case this government "had said its last word on either point," you saw yourself, though with deep regret, in the necessity, agreeable to your instructions, to consider your mission as ended, and request the appointment of a day and hour for your official leave taking.

Since your excellency states having come to this determination in consequence of a new memorandum, delivered to you by the Hon. Zavala, and of the reply he gave to your note of the 4th instant, both in this department, from the tenor of which two documents you conclude it to be necessary, for the time, to give up all hope of approaching the definite arrangement of the vexatious boundary question and not to enter into other and more transcendent negotiations, which might serve as cement for the future greatness of both countries, and lay the blame for their not having reached a favorable issue upon this government, I consider it my duty, ere replying to the concluding portions of your note, to submit to you some remarks, leaving certain ideas and considerations, to which my government has given no occasion, unnoticed.

Your excellency says that the boundary project submitted by Mr. Zavala, in his memorandum of 2d instant, made you see the situation plainly and comprehend, "with painful grief, the idea that Nicaragua did not harbor the best dispositions toward her friend and sister, the republic of Costa Rica, whom it seemed more the intention to repulse, like an enemy to be feared, than to attract as a friend whose affection it is desirable to preserve," and that, under that impression, you directed Mr. Zavala the said communication of the 2d instant, wherein you asked explanation on three points which you considered primordial for the settlement of your course as soon as the fundamental ideas of this government were known.

Mr. Zavala replied categorically to all the points contained in your said dispatch, frankly making manifest the brotherly feelings entertained by the government and people of Nicaragua toward her friend and sister, the republic of Costa Rica. He cited also the explicitness of the president of this republic in the interview at Rivas to the president of Costa Rica on this government's and the entire nation's opinion of the non-subsistence of the Jerez-Cañas treaty of April 15, 1858, and of the necessity of proceeding, at the earliest day, to a revision of the dividing line, as a step to be taken previous to whatever other negotiation; and since the project submitted in those conferences by the Nicaraguan commission had been admitted in principle, which, in substance, is the same as that of Mr. Zavala, and the object whereof is to remove the obstacles created by said treaty to the development of the Nicaraguan commerce and navigation, without in any way injuring the real interests of Costa Rica, Mr. Zavala was right when he was surprised to find that you, in the statement of those wishes, so often repeated, did see an expression of the bad disposition of the government and people of this republic toward its friend and sister of Costa Rica.

Ever since the boundary question between these two republics began to be agitated Nicaragua was always disposed to give up to Costa Rica all what could not be made to serve as impediment in the free exercise of her sovereignty over the waters of San Juan River, principally for the execution of the inter-oceanic canal, which was the brightest hope comforting her in the entire course of her existence. Then Costa Rica made demands which, compared with those of to-day, may be called modest, for, though it be true that on several occasions she solicited to become possessed of the right bank of San Juan River and of Lake Nicaragua, she never raised the pretense to challenge to this republic the unquestionable right of the exclusive domain of the interoceanic canal, and proposed rather that, at all events along the whole extent of the littoral of both river and lake, a strip of land from two to three leagues wide should remain to the disposal of the Nicaraguan government, to the end that the ne-

gotiations she might undertake for opening the canal might not be paralyzed, and, moreover, offered a pecuniary indemnity for the lands that might be transferred to her till to the lake shore. (Proposition of Dn. Felipe Molina, of 1848.)

At this moment the question is presented under very different aspects. Your excellency desires it to be understood that the intervention in the affairs of the interoceanic canal attempted by Costa Rica "does not alone cover a friendly offer, but that it also constitutes a right, growing especially out of her conterminous position," and asserts "that none of the reasons adduced by Mr. Zavala are sufficient to extenuate for the negative, considering the friendly spirit of the offer, as to impugn the right Costa Rica possesses of intervening in a work the character whereof is eminently national."

This entirely new pretense lays open the serious inconveniences encountered by Nicaragua from the announcement of a direct intervention and joint action in the canal enterprise, and it alone would be enough to justify the apprehensions your excellency attributes to Mr. Zavala, to the government, and to the people of this republic, because the spontaneous and fraternal offers of Costa Rica toward the shortest and securest result of the negotiations upon this important work are not accepted immediately. For some time Nicaragua is endeavoring to remove the impediments thrown in her way by the boundary treaty, and the government would not be justifiable at all if, instead of doing away with those inconveniences, it contracted compromises which would raise up more insurmountable ones. If your excellency, with merely beginning colloquies upon the subject, means to leave understood a basis for future questions with Nicaragua, how many will then not be raised after celebrating a convention whose clauses may be subject to a thousand interpretations.

I repeat to your excellency what the president, in conversation, has told you several times, namely, that the government, convinced that the boundary treaty is an obstacle to the aggrandizement of Nicaragua, she will sincerely procure to modify it in terms more favorable to the republic, and that if not able to obtain that, he would prefer to continue the *status quo*, else he would have to respond to the nation, which feels injured by that treaty, when he would be called upon to account for what he had contracted, still more onerous compromises for the country.

At this moment I do not deem it advisable to explain the arguments of the government for considering the boundary treaty imperfect or to impugn those advanced by your excellency to prove its subsistence, for, as Mr. Zavala said, very correctly, the government is not the competent authority to decide on its validity or nullity, nor does it intend to impede its execution until the sovereign of Nicaragua (Congress) has given its decision. And, moreover, notwithstanding the serious difficulties encountered in the way of a definite and satisfactory settlement of this grave question, the hope must not be lost that one day patriotism, disinterestedness, and a spirit of strict justice will find the road leading to a lucky unraveling, which will mark an era of prosperity for both countries.

From this explanation your excellency will see that this government's policy as to the boundary treaty of 1858 has nothing undecided, but is, on the contrary, clear and very firm. If, on one hand, as has been said so many times, the treaty is considered null, not alone for the reasons stated but for being extremely onerous to the interests of the country and humbling to its dignity, it is, on the other hand, certain that it has respected it, and will continue to respect it as long as it be not reformed by a fraternal understanding, or, as I have just said, be declared invalid by a legal enactment.

My government understands that if the boundary question could be discussed independent of that of the interoceanic canal, it would not be difficult to reach a satisfactory solution. Nicaragua has never pretended to curtail Costa Rica of any part of her territory, or to deprive her of any advantage ours might offer her. All our country has claimed is, not to be impeded in its own growth by the pretensions of its neighbor, and so true is it that the claims of Nicaragua have been limited to that, that pending the negotiations of Mr. Molina in 1848 the offer was made to Costa Rica to have for all times the superfluous possession of the lands contiguous to the right bank of San Juan River she might need to open roads for the exportation of her products.

The question of partnership of action and interest in the interoceanic canal is of a more grave character and difficult to solve.

Since these two republics consider themselves as two distinct political entities, as two sovereign and independent nations, the joint participation of the one in the great affairs of the other would be nothing else than an impracticable idea, an inexhaustible source of questions and disagreements, productive of serious conflicts, because it would be difficult to avoid that the action of the one should not interfere with the interests of the other.

Yet, what difficulty is in the way of identifying the interests of both peoples, instead of uniting their action in one enterprise?

The undersigned and his government are of opinion that the only means possible for obtaining the result which his excellency Mr. Guardia had in view in proposing

to Nicaragua a joint action of both republics in the execution of the canal, is: the union of the two republics into one people. Only thus the resources of the one and the other country could be made to combine in that vast enterprise without running the risk of raising rivalries likely to undo the most vigorous efforts in its behalf. And not only would by this means a satisfactory end upon the most favorable terms for both countries be attained, but the step would at once solve the pending questions, for which there would not be any further cause, and would forever cut off every germ of misunderstanding between two nations who, by all its circumstances, are called upon to form one.

Don Gregorio Juarez, in 1848, negotiator on the part of Nicaragua, with Mr. Molino, envoy of Costa Rica, for settling the question of Guanacaste and fixing the boundaries of the two republics, said in a note to his government, when asking for enlarging his instructions: "If Costa Rica, together with Nicaragua, became one sole nation, and erected upon the territory in dispute the throne of their sovereignty, then the world would see springing from such small incidents wonderful events, whereof his tory furnishes many examples; but since, unfortunately, such occurrence is so far remote from us," &c.

At that epoch it seemed almost impossible to reach a result, the beneficial consequences whereof could not be denied, but to which a thousand prejudices of various classes were opposed. But to-day, in presence of the probable realization of the inter-oceanic canal, which will bring about a salutary transformation in the sections of Central America, and, may be, in the other sister republics of the continent, and whose immense advantages Nicaragua and Costa Rica will most immediately earn; to-day, when both nations have passed the difficult experiment, united to sustain their independence, and have reason to hope for more intimate relations by means of telegraphs and railroads, should not the moment have come to consider seriously and maturely the ways by which to realize the intentions of nature, that these two peoples should constitute one? Why not remove the weak barriers between them that separate members of the same family? My government deems the realization of this idea of unity not difficult, which would present in relief the high sentiments of fraternity whereof, as your excellency says, your government is inspired, and mine abounds, and which, perhaps, will serve as a salutary example to the other sister republics.

Since your excellency, after the dispatch to which I am replying, has submitted to me a new memorandum for the settlement of the boundary question, which contains stipulations unacceptable for Nicaragua, the government has considered the subject more maturely, and in the hope that the present negotiations would lead to an arrangement satisfactory to both parties, has authorized me to transmit to you the inclosed project of a treaty, which I submit to your consideration. Your excellency will perceive from it that all concessions possible within the competency of the government, are made to Costa Rica, and, may be, some even transcending it, in exchange whereof the obstacles thrown in the road of the aggrandizement of Nicaragua by the treaty of 1858 are removed.

But should your excellency, notwithstanding this new intimation, still insist upon withdrawing, without waiting for your enlarged instructions, which the undersigned and his government would much regret, as they had expected from this mission an entire termination of the pending questions, then the undersigned is authorized to designate to your excellency to-day, four o'clock p. m., for taking your official leave.

Again assuring your excellency, &c., &c.,

A. H. RIVAS.

Extracts from a treaty project submitted by the Nicaraguan minister of foreign affairs to the Costa Rican plenipotentiary, in twenty articles.

ART. 2. The line between the two republics shall commence from a point three geographical miles south from the right bank of the mouth of the Colorado River, and shall follow parallel the course of that river to its bifurcation, also three miles distant; thence parallel to and at the same distance along the right bank of San Juan River, following all its windings till to a point three miles distant from its origin in the lake; thence parallel and at the same distance along the south lake shore to the intersection with Lapoa River; thence a straight astronomical line shall be drawn to the central point of Salinas Bay in the Pacific.

ART. 4. Costa Rica is to have the right of free navigation on the lake and on rivers San Juan and Colorado in the same manner and subject to the same laws as Nicaraguans; the eminent domain and *summum imperium* on lake and rivers remain with Nicaragua. In the same way shall Costa Rica have the free use of the bay and port of San Juan del Norte. On the other hand shall the Nicaraguans have the same right of free navigation on rivers Sarapiquí, San Carlos, and Frio, to Costa Rica competing the eminent domain.

ART. 5. Costa Rica to have the right of opening upon Nicaraguan territory the necessary roads for importation and exportation from respectively, to the lake, Colorado and San Juan Rivers, and San Juan Port, and to be for all times superfiary owner of those roads.

ART. 6. The bay of Salinas to be common; both republics to defend it and the bay of San Juan del Norte.

ART. 7. In case of war between the two republics, no act of hostility to be committed upon the waters declared common and their banks.

ART. 8. In case of the excavation of a canal, its right bank to be the boundary from the Caribbean Sea to the lake; thence the south shore of the lake to the Lapoa River; thence the right (this is a plain mistake, it means the left or south,) bank of said canal to its mouth; provided that it does not deviate more than six geographical miles from the line drawn in article 2. Nicaragua reserves over the canal its sovereign rights.

ART. 11. Costa Rica to have a consulting vote on any contract entered into by Nicaragua on the interoceanic canal.

ART. 12. Nicaragua binds herself to stipulate in behalf of Costa Ricans the same advantages in the use and navigation of the canal and in the tariff of goods and passengers (*sic*) as for Nicaragua.

ART. 16. A telegraph to be established between the two republics.

ART. 17. Minting of coins, weights, and measures according to decimal system.

ART. 18. Extradition of criminals, &c., &c.

[Inclosure 2.—Translation.]

Boundary treaty between Nicaragua and Costa Rica.

Preamble and article 1 unimportant.

ART. 2. The dividing line between the two republics, beginning at the Mar del Norte, (Caribbean,) shall start at the extremity of Punta de Castillo, at the mouth of San Juan River, and shall run along its right bank to a point three English miles distant from Castillo Viejo, measured from the outside fortifications of said Castillo; thence in a curve of three miles distance, whereof the fortifications form the center, to a point above Castillo two miles distant; thence in the direction to Lapoa River, that flows into Lake Nicaragua, following a course always two miles distant from the right bank of San Juan River, with its windings, to its origin from the lake, and from the lake shore to said Lapoa River, striking it parallel with said shore; from that point, also distant two miles from the lake, a straight astronomical line shall be drawn to the central point of Salinas Bay on the Pacific, where the demarkation of the dividing line between the territories of the two republics shall end.

ART. 3. The corresponding survey of this dividing line shall be taken for a whole or a portion thereof, by commissioners of the two governments, these agreeing upon a time when it shall be done. Said commissioners may, if by common understanding they may be able to find natural landmarks, deviate some in the curve around Castillo, as well as in the parallel line along the river bank and the lake shore, or in the straight astronomical line from Lapoa to Salinas.

ART. 4. San Juan del Norte and Salinas Bays shall be common to both republics, and, consequently, so their advantages and the obligation to contribute to their defense; and Costa Rica shall be bound for the portion corresponding to her on the bank of San Juan River, in the same manner as Nicaragua, by treaty, to join in watching it in the proper manner, on which both republics will agree, for its defense in case of aggression from outside, and they will do it with all the power at their command.

ART. 5. As long as Nicaragua be unable to recover full possession of all her rights in the port of San Juan del Norte, the *Punta de Castillo* shall be of absolute common and equal use and possession, both for Costa Rica and Nicaragua, fixing, during the time this community lasts, as limit thereof, the whole course of Colorado River. And it is, moreover, stipulated that as long as the said port of San Juan del Norte has to exist as a "free" port, Costa Rica can recover from Nicaragua no port duties in Punta Castillo.

ART. 6. The republic of Nicaragua shall have the exclusive domain and *summum imperium* over the waters of San Juan River from its outlet from the lake to its mouth into the Atlantic; but the republic of Costa Rica shall enjoy in said waters the perpetual right of free navigation from said mouth up to three English miles from Castillo Viejo, for the object of commerce, be it with Nicaragua or with the interior of Costa Rica by the river San Carlos or Sarapiquí, or by any other ways coming from the portion of the banks of the San Juan which will be determined to belong to that republic. The vessels of either country may indistinctly make fast upon the river banks wherever navigation is common without being subject to any class of taxes, provided such are not established by an agreement of the two governments.

ART. 7. Has only a transitory interest.

ART. 8. Should, ere the Nicaraguan government had received cognizance of this convention, the contracts entered into for canalization, or for transit, have, for any reason whatever, become null, then Nicaragua binds herself not to enter into another upon those subjects without previously learning the opinion of the Costa Rican government on the inconveniences it may have for either country, provided that this opinion be communicated within thirty days after the receipt of the inquiry, in case Nicaragua represents the case as urgent; and if, by the contract, the natural rights of Costa Rica are not harmed, then her opinion shall be merely consultive.

ART. 9. For no motive whatever, nor in case of war, in which, unfortunately, the republics of Costa Rica and Nicaragua may be drawn against each other, shall they be permitted to commit acts of hostility in the port of San Juan del Norte, or in the river of that name, or on Lake Nicaragua.

ART. 10. The stipulations of the foregoing article being essentially important to a due security of the port and river against foreign aggressions, affecting the general interests of the country, the strict fulfillment thereof is placed under the special guarantee, which, in the name of the mediating government, (San Salvador,) its minister plenipotentiary present is disposed to grant, and actually does grant, by virtue of the full powers he declares to be conferred upon him by his government.

ART. 11. In witness of the good and cordial understanding now established between the republics of Costa Rica and Nicaragua, they renounce upon all the assets they may possess against each other up to the signing of the present treaty, under whatever title they may be held, and, in like manner, do the two high contracting parties abstract from all reclamations for indemnity to which they may deem themselves entitled against each other.

ART. 12. This treaty shall be ratified, and its ratifications exchanged, within forty days of its being signed at Santiago de Managua.

In witness whereof we sign the present in three copies, together with the honorable minister of San Salvador, at San José, capital of Costa Rica, the 15th April, 1858.

JOSÉ M. CAÑAS,
MAXIMO JEREZ,
PEDRO ROMULO NEGRETE.

Approved, San José, the 16th April, 1868, by

JUAN RAFAEL MORA,
President of Costa Rica.
NAZARIO TOLEDO,
Secretary of State.

Protocols of exchange.

Thomas Martinez, President of the republic of Nicaragua, and Juan Rafael Mora, President of that of Costa Rica, fully and completely authorized by the respective Congresses of Nicaragua and Costa Rica to proceed to the exchange of the ratifications of the territorial boundary treaty, signed by the plenipotentiaries of either republic, and by that of Salvador, as mediating power, on the 15th of April of this year, at San José, capital of Costa Rica, &c., being met at the town of Rivas, in Nicaragua, for the above-said purpose, we have executed the exchange of the respective official documents of ratification of said treaty of 15th of April, undersigning as we do in three copies, countersigned by the ministers for foreign relations of Nicaragua and of Costa Rica, April 26, 1858.

TOMAS MARTINEZ.
GREGORIO JUAREZ, *Minister.*
JUAN RAFAEL MORA.
NAZARIO TOLEDO, *Minister.*

No. 321.

Mr. Riote to Mr. Fish.

No. 123.]

UNITED STATES LEGATION,
Leon, October 20, 1872. (Received Nov. 18.)

SIR: This government has recently published a treaty celebrated with that of Italy, March 6, 1868, article 4 whereof contains the following stipulation, viz:

"The citizens of the contracting parties can equally practice in the ports of the two countries the coastwise trade and cabotage, not paying at each port higher duties than those paid by the national vessels."

Considering that Nicaragua possesses no mercantile marine at all, the stipulation redounds to the benefit of Italy. Our treaty with Nicaragua, on the contrary, Article II, in fine, prohibits the coastwise trade, a clause the operation whereof, for the reason stated, works only against our shipping.

Now there seems no doubt that, by virtue of the most-favored-nation clause in our treaty with Nicaragua, we may claim the same privilege as that accorded to Italy. But there exists a grave consideration which has prevented me from so doing, and upon which I would like to be instructed. At the first glance it would seem as if, under the circumstances, the admission of the cabotage would be strictly in our favor, yet, if we could claim the right of the coastwise trade in Nicaragua, her flag would, of course, be entitled to the same privilege on our shores. Now, I do not apprehend that the Nicaraguans would at once become a seafaring nation, but I do apprehend that European merchantmen would procure Nicaraguan nationality, to the end of practicing the coastwise trade along the coasts of the United States. And it seems to me as if the disadvantages arising to our marine thus would be a good deal graver than any advantages it might be able to reap from the coastwise trade in Nicaragua.

Practically the steamships of the Panama Railroad Company, with the full knowledge and approval of the Nicaraguan authorities and to the benefit of the country, are carrying on coastwise trade between the ports of Corinto and that of San Juan del Sur; and fearing that under changed circumstances, so easy to happen in these countries, this might be taken as a cause for complaint against the steamers, in conversation with the president and ministers I have several times urged upon them the expediency of surrendering that *privilegium*, which for this country is, indeed, an *odiosum*, referring at the same time to the absolute want and impossibility of land communication between their ports on either ocean, and the lack of a national marine, and explaining the history and ends of Minister Sully's invention of cabotage. They agreed fully with my views; but, being blindly wedded to old and particularly French precedents, and ever suspicious of being overreached at intimations coming from American sources, also being too indolent to study a question out of the beaten track, they have never moved in the matter. I am firmly persuaded that the permission of coastwise trade by our merchant marine along the Nicaraguan coasts would benefit even more Nicaragua than ourselves, and that, in case of the construction of the interoceanic canal, it will become a positive necessity.

I have, &c.,

C. N. RIOTTE.

XXVI.—PERU.

No. 322.

Mr. Thomas to Mr. Fish.

No. 6.]

LEGATION OF THE UNITED STATES,

Lima, Peru, September 26, 1872. (Received October 21.)

SIR: In the relation, which I had the honor of addressing to the Department, of the events which terminated with the death of President Balta, and the proclamation of President Pardo as the constitutional ruler

of Peru, I was careful not to indulge in any speculations regarding the future progress of this country, partly from the disturbed condition of affairs after the attempt of the Gutierrez, and partly from the fact that my short residence in the republic had not allowed me to perfectly form my opinions regarding the political situation. I beg you to understand, however, that I am constantly observing the different phases of political life through which Peru is passing, and, at the proper moment, I shall have the pleasure of communicating to you the result of my investigations.

I may state that, from what I have already remarked, the present administration entertains the kindest sentiments toward the United States, and that, although the difficulties in the path of reconstruction are undeniably great, I feel confident that President Pardo and his advisers are taking the proper steps toward overcoming them.

I have, &c.,

FRANCIS THOMAS.

No. 323.

Mr. Thomas to Mr. Fish.

No. 10.]

LEGATION OF THE UNITED STATES,

Lima, Peru, October 21, 1872. (Received November 18.)

SIR: Nothing has occurred concerning public affairs in Peru since that hideous and abhorrent termination of the insurrection of Gutierrez, to disturb the prevailing opinion of this city, which teaches me to believe that there will be no further attempt to overthrow the constitutional authorities of this republic, during the passing presidential term, which is to terminate on the 2d of August, 1876.

The legislature and executive branches of this government appear to be in perfect accord, and they have to all appearance the entire confidence of the people; judging from the proceedings of Congress and the tone of the public press, there is a very general acquiescence in the financial policy of the President, as outlined in his messages to Congress. This policy contemplates careful avoidance of all public debts, until the numerous railroads now being constructed in Peru are completed, and proposes to adhere scrupulously and faithfully to certain promises and engagements heretofore entered into, under which all money accruing to the Peruvian government from the sale of its guano, is pledged to a particular class of public creditors.

The determination to abstain from diverting the guano fund for the payment of the current expenses of the government, creates a necessity for resorting to increased taxation, as a means to supply a deficiency in the annual income, and the President proposes to resort for this purpose to indirect in preference to direct taxation.

As this deficiency does not exceed 8,500,000 soles, I perceive no reason to doubt the adoption by Congress of the measure proposed, and the acquiescence therein of the people of Peru. This will, however, in my judgment, only postpone a serious crisis in the financial affairs of this republic.

Four years hence, the railroads now in progress will have been in all probability completed. Within the same period of time, the guano deposits, if they be not exhausted, will be so much reduced in quantity that the value of the balance on hand can be readily reckoned. And if it is

then discovered that the commercial importance of these railroads has been largely overrated, a very grave crisis in the financial affairs of this country will be impending. I would not be understood as intimating any opinion as to the probable income to be derived from the railroads in progress, for I have not sufficient data to justify a judgment in the premises. I propose to collect and communicate to the Secretary of State full and minute information on the subject. Nevertheless, with the limited information I now have of the condition of this country, I may venture to predict grave and disastrous complications, if in the sequel it becomes necessary to resort to a system of burdensome taxation in support of the public credit of Peru. Although Peru is undoubtedly immensely rich in latent resources, I fear very much that at least eight-tenths of its population would not be (the other two-tenths unquestionably would be) willing to sustain at any sacrifice the nation's honor until these resources could be developed.

I have had frequent occasion, since my arrival in this deeply interesting country, to doubt the wisdom of that policy in Congress which forced the retirement of the commissioners of the United States from the congress which, forty-five years ago, assembled first at Panama, and afterward at Tacubaya. It seemed to me when that congress was proposed, and I believe now, that, without involving the great republic I have the honor to represent in entangling alliances, such a convocation as that of Panama could have aided essentially the suffering cause of civilization and humanity in Mexico, Central America, and all other republics of this hemisphere. And I doubt if, within the next half century, much progress will be made toward permanent peace and prosperity in Peru or the countries referred to, unless the enlightened and faithful few who are living within the jurisdiction of these states, and are overwhelmed by numbers, can have the inestimable countenance and encouragement which the Government of the United States alone can give.

I have, &c.,

FRANCIS THOMAS.

No. 324.

Mr. Thomas to Mr. Fish.

No. 12.]

LEGATION OF THE UNITED STATES,

Lima, Peru, October 21, 1872. (Received November 18.)

SIR: I have the honor to inclose herewith one printed copy of President Pardo's inaugural address, and one printed copy of his special message to Congress, concerning the financial affairs of Peru; both of which were delivered by him in person orally.

I am, &c.,

FRANCIS THOMAS.

[Inclosure 1.—Translation.]

President Pardo's inaugural address.

LEGISLATORS: Called by the popular suffrage to occupy the highest post with which the nation can honor one of its sons, and raised to the same, notwithstanding an obstinate resistance where all means at the disposal of force were brought to bear

even to an insurrection against national institutions, allow me, gentlemen, to humble myself before the dictates of Providence, and the grand victory popular opinion has obtained after a bloody struggle against arbitrariness.

In this wise Providence has willed it that the political history of half a century should terminate, aiding you in a visible manner to inaugurate your undertakings on the fifty-first anniversary of our national independence, over the foundations of a victorious opinion, and of a right snatched from brute force.

Let us leave, gentlemen, to posterity the historic appreciation of the character of the unfortunates whose actions led the country to the dangerous abyss from which patriotism has saved it, and let us only at present take into consideration the political lesson taught by our fruitful campaign of fourteen months' duration, studying it now and forever after with that anxiousness and elevation of soul with which public men should consider the inclinations and desires of a nation, and the means which it embraces to direct and apply the same to its service, so as to lead everything in the right path.

The legal period has terminated; and to-day, in a pacific manner, the transfer of command is made. I have the honor to appear before you, and you are assembled in this august edifice because the nation has desired with its powerful arm to maintain public peace at all hazards, seeking in the practice of its institutions and that submission to authority and observance of the laws the fulfillment of its legitimate aspirations. Said victory would have been complete had not, on the termination of a struggle in which the nation has shown itself so great by its merits, a military rebellion broken out to interrupt the pacific and glorious achievement that popular opinion had obtained.

The results of said struggle fully demonstrate the programme of the government which has succeeded it, setting forth in a clear manner the inclinations and desires of the people, and the most urgent of political necessities.

If a veneration of the institutions and obedience to its mandates have been the means of the nation's victory, the due practice of the same ought to be the first duty of the government it has established, for the simple reason that only on such solid basis can be consolidated a lasting public peace.

The most perfect conformity at present existing in the opinion of the people, and the legitimate representatives of same, would have been a sufficient guarantee that in this, as in any other period, the nation expected from your wisdom the most genuine idea of public sentiment expressed by you, and in the laws you may have promulgated a most complete satisfaction of their aspirations and necessities; to the confidence inspired from said harmony of sentiments and ideas there has been added the enthusiastic admiration shown by every one at perceiving the glorious attitude assumed by the representatives of the Peruvian nation; in such a trial, they all in a body denouncing, in defense of national institutions, the atrocity of those who dared to violate the sanctuary of our liberties.

Excuse me, gentlemen, if, at the commencement of the political task which the benevolence of my fellow-citizens has honored me, I submit to your wisdom the several cases which, in my judgment, most imperatively demand your powerful aid and protection to direct, so as to facilitate the march of public administration.

The enlightened struggle and pacific victory of the people, during the last electoral agitation, has demonstrated in a brilliant manner how much progress has been made during the last few years toward political advancement, and this circumstance alone should be the reason for proving the necessity of confiding to them with more amplitude the administration of their local interests, embarrassed in such a manner that precludes a serious examination of abuses, and paralyzes the action of the people in the support of their own interests, separating from the administration of the same their most enlightened men, instead of opening to them the necessary facilities, so as to stimulate their generous activity.

Such serious embarrassments will never disappear if the law is not enforced to prevent them; taking into consideration the most suitable methods to be employed in the administration of localities, and reorganizing the municipality, so important to every nation, most powerful auxiliary to a democratic regime, and primary basis of political progress, both moral and material for Peru. Municipal reorganization will serve as a political school to all citizens, and will be beneficial in each locality to rouse the dormant and inactive principles prevalent in them all; it will emancipate the people from the administrative tutelage they are now living under, and free the government at the same time from the employment of a multitude of agents, who, being aliens to general administration, are a burden nevertheless, and the supporting of whom it is almost impossible, in a responsible point of view, to uphold before the people.

But municipal organization, as any other legitimate representation of the people, has for its foundation the establishment of a simple and rapid electoral principle, occupying their attention and activity the least possible time, and faithfully accomplishing their views, meet the expectations of a democratic principle, obviating the incon-

conveniences that an imperfect law may offer for the free expression of popular will, and conjuring the dangers which its effect might occasion to public tranquillity.

Municipal organization, electoral organization, gentlemen, I consider, to the best of my judgment, to be the two corner-stones of the constitutional edifice.

To perfect in every possible way the laws referring to them will be the establishment of a republican government, without which such will never exist.

Legal responsibility of public functionaries, who abuse the authority vested in them, is another of the political necessities that has clearly been evidenced by the doings of the last few days, as without it any law is useless and any right contemptible. You may rest assured that, on my part, I will do whatever constitutional attributions permit me, so that the crimes perpetrated by persons exercising authority be submitted to the knowledge of the competent tribunals in compliance with the law, and you will be convinced that this duty will be fulfilled with that unbiased impartiality of a citizen to whom, from this very moment, has disappeared the hostile attitudes of political parties in Peru.

I will not omit to state, however, on this head, the insufficiency of our penal code of laws, and the dangers accruing, both to public morals and the guarantees of the rights of citizens, through the dilatoriness so common in the proceedings of the administration of criminal justice. The energetic reformation of the same, in such a manner that it will guarantee with efficacy the rights of citizens and the exercise of authority, is the grand problem of political society you are called upon to resolve, as it has not been done in Peru. Now, more than ever, are those defects to be noted, if we look back at the disgraceful manner in which a portion of the army, led by disloyal chiefs, shook the foundations of society during the five days which it held power.

If public vengeance exacts the punishment of offenders, the honor of the loyal portion of the army demands the more urgently that it should be purified by bringing to justice all those of its members who were in any way implicated in the most atrocious crime the republic ever witnessed.

You may be convinced, gentlemen, that on reorganizing the reduced army it may be necessary for the nation to keep in active service, it will be confided solely to responsible chiefs and officers of unblemished antecedents and tried patriotism, the guardians of public interest and institutions, as of the honor of our flag.

But this will not be sufficient to arrive at the true reformation of the army. The establishment of an especial school will be necessary, so as to retemper, through the medium of education, a true military ardor; and a law of conscription should banish forever the horrible crime of recruiting, fixing on adequate reserves the means of augmenting the effective strength of the army when public peace or national honor demands them. A law which is controlled by invariable rules, stating the manner how it should be proceeded with on conferring military grades, is likewise a necessary condition, as much for the benefit of fiscal interests as for the glory and renown of the profession.

At the same time that public vengeance is satisfied by the punishment of delinquents against the country, it is an act of justice incumbent upon public functionaries to uphold and estimate at its proper value the distinguished services that constitutional order has experienced from the patriotism of the navy during the unfortunate days through which the republic has passed, having contributed another call to national gratitude.

For want of the necessary data by which I could be made acquainted with the true situation of our financial resources, my first duty will be to lay a statement before you, so that both chambers may simultaneously re-establish financial equilibrium, procuring the same through a proper management of the income and reduction of national expenses, as far as the public service permits, as also salaries of public functionaries and public works under commencement. The undertaking of new works before this object is attained would not only compromise the future financial prospects of our country, but also the conclusion of works that are at present on hand.

There are, however, some public undertakings, as, for instance, popular instruction, in which the country should spare no expense to achieve the result, as the education of each citizen is the first condition of the true greatness of nations.

I advisedly limit myself to call your attention to the preceding points, because my object is not so much to present you with a pompous programme as to ask from your enlightenment, in the form of laws, the measures I consider necessary for the realization of the purposes we should endeavor to attain, and which are recapitulated in the definitive words "A practical republic;" "A republic of truth." The above embraces my programme, or better still, the programme I have received from the nation which has sprung from each citizen's heart, and which is at present the synthesis of national opinion.

Legislators: In the realization of this programme, the highest and most brilliant portion is yours, as it is incumbent on you to state legally the principles by which the nation should be ruled, the bases on which public undertakings should be organized, and even the regulation of these in voting for the current estimates; mine is the more

humble duty of ordering your dispositions to be executed, as also to be the zealous guardian on the fulfillment of the laws.

Though limited to the same, my constant endeavors will be to arrange my political views in conformity with the opinion of the majority of the chambers, which legally represent the country's opinions, and in my most loyal desire to establish a parliamentary system, I assure you, gentlemen, I sincerely regret a constitutional law prevents me from raising to the administration any members of Congress without their losing the right of representing the country.

Without this obstacle the representatives of the nation would periodically convey to the executive the will of the chambers, which are the soul of the country, and therefore be the spirit by which the administration should ever be guided.

My desires to arrive at this result will be to remove, by every possible means, that great impediment, while time is given to introduce into our code of laws so important an amelioration.

To obey the oath I have just taken with that constancy and rigidity of conviction, is the only manner of repaying that immense debt of gratitude I owe for the mark of distinction I have received at the hands of my fellow-citizens.

Let them be convinced, as also you, gentlemen, that if my abilities do not allow me to accomplish their expectations, the rectitude of my conscience will never be wanting as an acknowledgment of the confidence deposited in me.

MANUEL PARDO.

[Inclosure 2.—Translation.]

Special message on the financial state of the country.

LEGISLATORS: At the time I took the oath before you, to comply loyally with the duties that the constitution imposed upon me, I offered to manifest the situation in which we found the country as soon as I might be able to gather the data necessary to know it. To-day I have them, and I comply with this promise in virtue of the lawful duty and the honor with which my fellow-citizens have conferred their confidence, to lay before them the situation with that honesty which a man owes to his country and to himself; and I submit, therefore, to your high consideration the measures that that situation requires, to re-establish the equilibrium of the state, and to affirm and raise with this, in a manner efficacious and permanent, our credit at home and abroad.

There are various points which constitute the cardinal questions upon which I have the honor to occupy your attention, and which I will treat separately:

The product of guano in its relation with the foreign debt, to which payment it is attached, and the home expenses in their relations with the entries of the productions of the country, that which is only applied to property, will give us an exact idea of our annual deficit.

The arrangements contracted for the construction of railways, in the relations with the products of the hypothecations authorized for this object, and the total of the internal floating debt, will ratify yet more the necessity of re-establishing the equilibrium of the states to raise its credit and dignity, which the government of Peru is obligated to enforce with that religious exactitude which it has always complied with in its engagements, and in which alone it will permanently adhere to, when our home and foreign creditors are clearly assured of the economical strides of the country, by the definite settlement of its internal affairs.

I will, in the end, submit to your high consideration the measures with which the government hope, without extinguishing immediately the deficit, by preparing for the gradual extinction of it, by devising means against the uncertainty of the future, the great material interests, political and social, of all parties, especially in Peru, that are intimately bound up with the regular march of the public administration.

The guano for the United States of North America, produced during the year 1871, was 23,100 tons, according to the accounts rendered, as per the accompanying documents of the minister of finance numbered 1.....

S.902, 602 87

According to document No. 2, there was due on December 31, 1871, to the consignees of this guano, by previous engagements.....

3, 605, 757 72

Besides which we have to meet the service of the Peruvian-Chilian bonds, and can calculate that in more than four years, including the present, the time necessary for their re-imbursement.

The sales of the guano in other markets from the year they were contracted under the administration of Dreyfus Brothers & Co., have been reduced from 538,700 tons, which they amounted to in 1869, to 393,700 tons, which were realized last year, and which, according to document No. 3, produced net the sum of.....

S.14, 856, 756 91

This realization was actually represented in each year as follows:

Service of the impost in 1865	S. 5, 000, 000 00
Service of the impost in 1870, at 6 per cent. interest on S.59,600, total of the bonds of the Oroga and Puno Railway	3, 576, 000 00
Service of the bonds by the Pisco and Ica Railway	101, 500 00
Service of 7 per cent. upon S.75,000,000 of the impost of 1872	5, 250, 000 00
	S.13, 927, 500 00

Difference in favor of the exchequer	929, 256 91
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This difference is represented at the payment of capital and interest by the advances of Dreyfus Brothers & Co., which, according to document No 4, amounted at the end of July last to S.16,871,368.50, and this, after deducting the S.7,500,000 which had been re-imbursed with the product of the loan of £15,000,000.

The *résumé* of these sums, and the result we arrive at, is, that the guano of Peru is totally detached for the service of the foreign debt and other creditors with which it is burdened and absorbed by those obligations.

According to the accounts of the returns of the republic in 1871, which are numbered 5, the total expenditure in the year has been... S.112, 514, 952 30

There has to be deducted from this amount the sums which figure in the account for the works on the railways, national exhibition, commissions and exchanges, creditors on former loans, interest, and other extraordinary expenses which come out of the product of guano, besides the interest and the liquidation of bonds of the foreign debt, according to the statement of the appended account, amount to	95, 385, 111 00
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Showing the result of the ordinary interior expenditure for the year 1871 to be	17, 124, 841 30
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Referring again to the figures of this account, and the debt which remains up to the last of December, 1871, and which ought to be added to this sum, as the most part which ought to be paid to the different departments during the year to which this account refers, we will now examine the estimates made by the former administration to present to Congress, and deduct from them the ordinary expenditure to our foreign minister, public works, and extraordinary expenditures which ought to be charged against the guano account. We arrive at the following figures, which are required for the different branches of the service:

Government department	S.1, 002, 000 00
Police department	2, 913, 000 00
Equity department	1, 026, 000 00
Religious department	291, 000 00
Public instruction	1, 498, 000 00
Hospitals	353, 000 00
War department	7, 042, 000 00
Marine department	2, 568, 000 00
Foreign relations	341, 000 00
Interior relations	4, 341, 000 00

But nothing is voted for public works or the ordinary service of the country; to those estimates requires to be added a yearly sum of.	21, 375, 000 00
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According to the preceding, the ordinary expenditure of the country may be computed at	21, 375, 000 00
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But again, according to the accounts for last year, the expenditure for the service of the country was	17, 129, 000 00
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We will now look at the revenue of the country, without taking into account the guano, which is, as we all know, expended in the payment of the foreign and other debts.

According to the returns for last year, the amount collected as taxes is, as by the papers No. 6:

Custom-house	S.6, 213, 000 00
Income-tax	575, 000 00
Tax on various establishments, public lighting, &c.	935, 000 00
Different branches of the census, &c., collected by the fiscal	380, 000 00
The rent of the railways of Mollendo, Oroya and Pisco	500, 000 00
Guano sold on the islands	74, 000 00

Total interior revenue	8, 677, 000 00
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Calculated at an ordinary increase, we are still within the limits of the expenditure last year, or say	S. 17, 100, 000 00
Considering the increase by the new scale of wages, all we have to place in front of the ordinary taxes is	8, 600, 000 00
So that we have an annual deficit of	8, 500, 000 00

Nor is this all. We have also a debt which hangs over the fiscal of Lima and the departments, and also over the receipts of the custom-house, and has been augmented by various sums which have been paid by decree of the government; others are being arranged for payment, with the rest of the public works now in progress, of which the actual cost would be lost if they are not finished. By reason of the number of those debts, and on account of the origin of some, and the nature of others, it is very difficult to give an exact enumeration of them; a special commission has been appointed with this object, and from the notes furnished by them the government has made those approximations.

According to return No. 7, there are waiting for payment bills and papers accepted by the treasury and the custom-house, and they will have to be paid at the value specified in the documents which accompany them; or, say:

For bills granted by those offices on account of the railways of Payta and Piura, Chimbote and Huaraz, Pacasmayo and Magdalena, Ilo and Moquegua, Huacho, Sayan, Salaverry and Trujillo, Lima and Chancay	S. 2, 799, 000 00
For returning to H. Meigs, esq., the 10 per cent. guarantee which was given in deposit on the railways, and which is secured in bills against the custom-house in Callao	2, 200, 000 00
For various payments made in July	1, 727, 000 00
Debts due by the fiscals of departments	632, 000 00
These together amounting to	7, 358, 000 00

As it is impossible to say how much will be necessary to complete the various public works (outside of railways) in the course of construction in the republic, and for which must be allowed for one year the sum of at least S. 2,000,000.

Without going into an examination of the state of the loan of 1872, as it does not belong to this department, we will notice only the results of its relations with the objects which it effects. The amount of this loan authorized by Congress for public works represents a nominal value of £15,000,000, whose approximate produce will be the following:

£15,000,000, at 75 per cent., is £11,250,000	S. 56, 250, 000 00
Deduct two millions sterling of the same, say 75 per cent., which has been taken by Dreyfus for his previous loan	7, 500, 000 00
Leaving	48, 750, 000 00
Expenses and commissions	2, 325, 000 00
Leaving a total of	46, 425, 000 00
Gained in exchange	2, 416, 643 83
Approximate amount received of this loan	48, 841, 643 83

With this sum the preference ought to be given to the public works authorized by the law of the Congress, and which have been contracted for in the following sums, as shown in the account No. 8:

Railway Juliaca to Cuzco	S. 25, 000, 000 00
Railway Chimbote to Huaraz	24, 000, 000 00
Railway Ilo and Moquegua, contracted for at S.6,700,000, and bought by Meigs at 75 per cent. by decree December 30, 1871	5, 025, 000 00
Section of railway Pacasmayo to Guadalupe	2, 100, 000 00
Section of railway Calasñique and Magdaleno, contracted for at S.5,000,000, and bought at 75 per cent. by the same decree	3, 750, 000 00
Railway Payta to Piura	1, 945, 000 00
Works of irrigation in Peru	10, 000, 000 00
Total	71, 820, 000 00

Over and above this, we have contracts to pay for other public works which are not included in the law which authorized the loan of 1872; or, say, the following:

Railway of Salaverry and Trujillo.....	S.3, 400, 000 00
Railway of Huacho and Sayan	1, 700, 000 00
One-third of the cost of the railway of Taena and Bolivia	6, 000, 000 00
Total	S. 11, 100, 000 00
	82, 920, 000 00

In this is not included the two millions six hundred soles which the government is obliged to lend to the contractors of the railway between Lima and Pisco, according to contract dated 12th July, 1869, which sum is to be returned by them during the term of their privilege, which is for twenty-five years.

On account of railway works has been granted, as is shown in account No. 7, orders for payment on the treasury in Lima, and on the custom-houses of Callao, Arica, and Iquique, for the sum of S.2,799,000, and in such a manner that should one of those fail it can be recovered from the others, leaving a debt to be paid for railways and irrigation of S.80,121,000, to pay which there is only the sum of S.48,841,000, the realized produce of the last loan.

The financial position of Peru is now comprehended in the five preceding paragraphs with all necessary clearness, not so much to lament the state which the country has been reduced to, as in order to discover the remedies which must be resorted to for its salvation. It is the place of the government to take the initiative to point those out, no matter how pain or difficult its mission.

Peru, therefore, must expend in a most profitable manner the proceeds of this loan, as the works on the railways, on which depend the welfare of this people, cannot be realized, and it is impossible to discharge by the proceeds of the taxation of the country the immense weight which overhangs it, and impedes the proper attention being given to the general expenditure of the country.

To secure the proper discharge of this loan, it is requisite, first, to liquidate the home expenses and create resources to support the country's vitality, without placing any dependence upon the proceeds obtained by the sale of guano; 1st, because this resource is totally expended in maintaining our foreign credit; and, 2d, we can only rely on this as a guarantee, when it is seen that this tax is not required to confront the ordinary expenditure.

The liquidation of the ordinary home expenditure can be obtained in two ways: 1st, the paying off of our floating debt; 2d, the filling up of the deficit between our revenue and home expenditure. But it is not possible to transact any operations on credit in order to obtain this first result, without having first obtained the second; because we can only have recourse to credit when we see that we are secure in our daily expenditure, and still less can we trust to that credit which has been employed to such an extent, the repayment of which is first necessary before we obtain further supplies.

Our financial position, at the present moment, is to create such resources as will cover the difference between our ordinary payments and receipts, or, say S.8,500,000 a year; then we can have foreign credit to confront the works already contracted for; home credit to pay engagements due, and secure at the same time the progress of the administration, in which is included *foreign and home credit, railways, public prosperity, and management.*

We cannot say if it be possible to obtain this result, but it is necessary, if the government have this intention, that they should confide in the people, without continuing to deceive them as to the true situation of the country; nor does it become them, in the dignity to which they have risen, for us to intimidate, but still to place this before them with firmness and resolution. The definite solution of this, our financial problem, is thus reduced to the three following points:

1st. The creation of S.8,500,000, in addition to the former revenue, to establish an equilibrium in the home affairs of the nation, re-establishing our home and foreign credit; then it is possible to follow the other two points.

2d. To use our home credit to cancel our floating debt.

3d. The definite emission of the loan to conclude our railways. The completion of these two problems depends entirely on the fulfillment of the first. In the creation of our ordinary home resources it is necessary, under all circumstances, to attend principally to these two essentials—*public taxation; immediate and sufficient funds.* These are the two beacons which must guide us to the solution of this difficult problem. The fountains from which we must obtain the results which the situation of the country demands cannot be other than "*direct taxation*" or "*indirect taxation.*" The first it is very difficult for the general government to impose, and, at the same time, produces no good results; it would be better to do it regularly by recovering a contribution on sales, which is now collected under the name of "contributions on land-owners and properties, industries and patents," and is applicable only to the municipalities who will have charge of the localities, and will be responsible to the treasury.

By this means are obtained three results: 1st, a quicker return of local impost taxes; 2d, less repugnance in the payment of them when it is positively known by the contributor that it will ultimately revert to his own benefit; 3d, a quicker return for produce.

Under these circumstances has been presented to the cabinet a project of decentralization in the administration, and which the government consider to be the base of public reform in the administration of Peru, and also to consign by this means the taxes of each locality to the payment of the expenses there; thus making a clear saving to the nation in the estimates of S. 1,500,000, without a diminution in the revenue, besides which, by this means of local administration, a great amount of attention will be given to the public good.

By the adoption of a decentral government and the local administration of the affairs of each district in Peru, the estimated deficit is thus reduced to S. 7,000,000, which sum ought to be still more reduced by other public taxes.

The indirect contributions which remain are two, a tax on the exportation of saltpeter, and the imposts of the custom-house.

Document No. 9 shows the gradual increase in the export of saltpeter during the last twenty-two years.

The estimated exportation of this article in the year 1873 would be S. 6,000,000.

The special circumstances connected with the exportation of saltpeter show an incontestable right on the part of the country to look to this as a means to replenish the treasury, and we believe without any hurt to this industry. Without mentioning the gratitude with which we look to this rich portion of our territory to replenish our exhausted coffers, we could call the attention of the people to the monopoly which Peru exercises in the world, in the production of nitrate of tarapaca, proving that in the last few years the production has been annually increased, and has nearly doubled the price during the last eight years.

While drawing attention to the great increase in the consumption and price of saltpeter, it is still worth while to apply ourselves to the greater cultivation of the land, on account of the diminution of the consumption of guano, although its present price is still relatively higher than that of saltpeter.

In referring to this duty, which can be collected on the export of saltpeter, the government is certain that eventually it will not injure the trade—leaving the exportation free to such a price as assures the producer of all the costs of its manufacture, and recovering only a duty on future profits, on a scale in proportion to these. The government indulges in the hope that by this means a new rise will take place in the European markets, and that the actual payment of this tax will fall on the consumer in place of the manufacturer.

The adoption of this project as a law awaits the decision of the supreme Congress, and by which the minister of home affairs would be enabled to supply a sum of S. 2,000,000, thus reducing the deficit to S. 5,000,000, which remains to be made up by the custom-house; nor do we think that it will be difficult to wait until this is completely paid up. The means to be adopted to augment the public taxes is the problem which must now occupy our attention; the means fixed upon must comply with the three following necessary points: The augmentation of the tax to the figure already stated, with the least prejudice to the consumer, and without any great disturbance to commerce.

That it is necessary to raise the taxes cannot be doubted for one instant, for only by the increase of those can we hope for the financial salvation of our country; nor ought any time be allowed to elapse before it is put into execution.

This proposal has been made on the information received from the tariff of duties, and the documents which accompany it, which has given us a clear knowledge of the means to be employed by the government to raise the duties collected in the custom-house to S. 2,500,000, more or less, by our increase of 5 per cent. on value, as now recovered, and by an increase of 10 per cent. on many articles which are now free, and which can easily bear the additional impost. By this means, and according to all reasonable calculations, the actual increase in the duties collected at the custom-house will be S. 4,000,000, which thus reduces the deficit to S. 1,000,000 a year. It is impossible, in such a document as this, to enlarge upon the details of the means which occur to my mind to analyze what may follow, because it is of the utmost importance to explain to all those interested. The changes which are comprehended in the five articles before stated are based upon the present tariff. The additional charge, by this means, on a yard of calico is little more than a quarter of a cent per yard; woolen goods, one cent per yard; cotton and silk mixed, three cents per yard; woolen trousers, twenty cents per pair; boots, fifteen cents per pair.

When once, by this means now proposed, we redeem our credit and have completely established our receipts and expenses, having thus consolidated our credit at home and abroad, we can again reduce the taxes to the lowest possible limit. The government has made arrangements with the bank here for a favorable consideration of this programme, and we view with pleasure the decision arrived at by the different establish-

ments of trust in Lima, who will co-operate all in their power for the financial salvation of the country.

This is also necessary in order to complete the engagements contracted for by the country, treating with respect the contractors and the people, who thus enable by their patriotism their government to adopt the means to restore the equilibrium of the nation.

Legislators, in the course of this document I have restricted myself as much as possible to our situation, limiting myself to the particulars necessary in order to allow you to judge of the same, and you have, with all the exactness with which we can obtain it, a knowledge of our financial position, which shows that we are at the junction of the two roads which lead to very different destinations; that we are in one of those positions, of salvation or destruction, in which Providence many times places men to prove the strength of their spirit. This is, gentlemen, the mission which we have now received, and of which we have to return a faithful account to our fellow-citizens, and in our history to future generations; by our decisions now we will make our republic great—greater than it ever yet was; by our genius we will remove her from the position she now holds to the elevated situation we have dreamed of for the last twenty years; but we can also, by only abandoning her in her actual path, by only one moment of indifference, weariness, or neglect, cause for a long time the evil consequences of this period, the bitter fruits of which we now recognize, if Peru and its representatives do not place in our financial salvation the vigor which is necessary to reconquer our political rights. I trust, gentlemen, that in your patriotism will be found the hand that Peru seeks to save herself; and the same time I trust and believe that you will be sustained by the enthusiasm of the nation in every step which that patriotism and your wisdom may suggest.

MANUEL PARDO.

No. 325.

Mr. Thomas to Mr. Fish.

No. 16.]

UNITED STATES LEGATION, LIMA, PERU,
November 21, 1872. (Received Dec. 16.)

SIR: From the time when I was fairly out to sea, on board the steamer bound to Panama, my mind began to run in a new channel touching the diplomatic relations of the United States, and I find myself now under a conviction that the fields in which, in the future, young, enterprising, philanthropic statesmen of the United States are to win for themselves renown, and for their country a still higher character than that now accorded to our great Republic among the nations, are the countries facing on the western and eastern shores of the Pacific Ocean. The conviction is forced upon my mind that the United States need first-class diplomatic representatives at China, Japan, Mexico, Colombia, Peru, and Chili, much more than they require the services of like representatives near the government of many of the principal powers of Europe. Those countries bordering on the Pacific need, to a very great extent, the products of industry of which the United States have a superabundance, and of which the surplus in the future is to be immensely augmented; that these productions may be disposed of in a manner advantageous in the highest degree to producers and consumers, commercial treaties are required beneficial to all parties concerned, and to be preceded, as far as practicable, by treaties establishing a unification of coins, weights, and measures. With a view to the opening of those channels of commerce, increased facilities for social and political intercourse are indispensable. I am aware of the measures adopted with that view, so far as China, Japan, Mexico, and Central America are concerned.

There is, however, no subsidy to any steamship company on the Pacific, south of Panama. And I do not perceive the importance of such a

subsidy. Facile communication by land, between the United States, Mexico, Central and South America, would, it seems to me, be much more effective than subsidies to steamship companies, in securing to the United States a due share of a valuable commerce, now monopolized, to a very great extent, by European countries.

A trunk-line railroad, commencing at some point on the Southern Pacific Railroad, and running parallel with and on the east side of the mountain-chain to Cuzco in Peru, or to Santiago in Chili, would, I believe, work, at no distant day, a wonderful revolution in the social, commercial, and political relation of the states through which it would pass and the United States. And I have reason to believe that the dormant wealth, still under control of the governments having jurisdiction over the soil, over which such a great work would pass, would abundantly suffice to construct and suitably equip the improvement. If so, nothing is needed but a harmonious movement in the right direction of the government concerned, inaugurated, countenanced, and encouraged by the Government of the United States, to lead to the construction, at no very distant day, of a great civilizing agent, which will in its consequences give stability to institutions now so often unfortunately overthrown, and pour a flood of prosperity and peace over all lands, now unhappily often drenched in human blood by civil wars.

Intending to pursue this subject hereafter, I propose to collect, collocate, and to communicate to your excellency facts, in addition to some already known to me, in support of the opinions I have ventured to express.

Hoping that it may not be supposed that I have in these speculations passed beyond the boundaries within which I am charged to act, as Peru is an integral and deeply interested portion of the field of which I have made hastily an outline sketch,

I have, &c.,

FRANCIS THOMAS.

No. 326.

Mr. Thomas to Mr. Fish.

No. 24.]

UNITED STATES LEGATION,

Lima, Peru, December 13, 1872. (Rec'd Jan. 7, 1873.)

SIR: The Congress of Peru, being limited by the constitution to a session of one hundred (100) business days, failed to act on several subjects of importance. His Excellency Manuel Pardo, President of this republic, called an extra session of Congress, which convened on the 9th instant.

I was present with other members of the diplomatic corps, the cabinet of the President, and the judges of the courts of Peru, by invitation, to witness the opening of the session of Congress. President Pardo made an oral address on the occasion, which was well received, and a translation of which is herewith inclosed.

I have, &c.,

FRANCIS THOMAS.

[Inclosure.—Translation.]

Speech of President Pardo on the opening of the extraordinary session of the Peruvian Congress.

HONORABLE REPRESENTATIVES: The Congress of 1872 assembled under exceptional circumstances, which were unfavorable to the work to be done. The inauguration of the new government demanded from it the solution of very grave questions, in fact of nearly all the matters affecting the political and economic problems of the country. On account, however, of the violent and disastrous end of the last administration, whose province it was to give you an immediate account of public affairs, the Congress had to resign itself to be deprived, as in reality it has been, of the materials and documents so necessary for its labors. Notwithstanding this the Congress has been able and has preferred to devote its attention to those subjects in which they justly saw that the general interests of the nation were compromised, and always looking to the same end has afterward solemnly expressed its desire to dedicate an extraordinary session to the conclusions of these important subjects and all others which have already been submitted to its wise decision. This is an example which will always speak highly in favor of its elevated views and patriotic aspirations.

In complete conformity with this spirit, the government has made use of the constitutional attribute which gives it the privilege of convoking an extraordinary Congress, with the object of being enabled to carry out its wishes by shaping into laws the different projects which have been presented for deliberation either by the government or by the representatives; projects intended to meet the more or less imperious necessities of the public service, and the sanction of the greater part of which the government deems indispensable to the regularity of the administration. Without this, the expectant attitude which the government has had to assume for the past four months would be indefinitely prolonged, as the authorization of Congress of all the plans brought under its notice is absolutely indispensable, in order that the government may proceed legally, and give the necessary impulse to the different branches which are under its direction.

The executive is actually occupied in putting in practice two important laws already passed by Congress, the one concerning military conscription, and the other the national guard. The government is fully satisfied with the services and loyalty of the small army which it has been able to form after the catastrophe of last July, an army which is very inferior in numbers to the exigencies of the service, but which will make the best nucleus for that which may be formed by a just application of the first of those laws, purified as it is of the odious abuses which have always existed among us. In this and the national guard the country will find the most powerful supporters of order, and of the stability of our institutions, as well as an inexpugnable defense against the attempts of that portion of society which, being composed of professional conspirators, is a constant menace to peace and constitutionalism, to wealth, public and private, and to the interests of the masses, who exist by the proceeds of their industry.

The veritable foundations of the public power depending on these two laws, the new municipal bill, which has been so favorably received in the different towns, as tending to awaken them to another existence, as well as in the chamber to whose deliberation it has been submitted, will afterward help to fix more solid bases for our administration; it will, at the same time, relieve the public functionaries from attending to a thousand affairs of secondary importance, which at present clog their action, and will vitalize the real elements of the people's progress.

I must now again call the attention of Congress to the projects which bear upon the economic future of the country. With the frankness which is due to the post confided to me by the nation, I have, on a former occasion, made patent to you the true state of the public exchequer, and, in short, though political or personal interests may have sought to disfigure it, the sole eloquence of the facts has been sufficient to form the national opinion on this point, so that now nobody wishes to deceive himself in the matter. The situation, as the Congress is aware, may be stated in two propositions. The proceeds of the guano, which, up to the present time, has sufficed for the internal administration of the country, will be swallowed up in attending to the foreign debt, when the new loan for the completion of the public works shall be realized; and the ordinary revenue of the state is barely sufficient to meet the half of the ordinary expenses. To permanently cover this deficit is, and always will be, the only serious mode of veritably and definitely solving the uncertainties of our economical situation, of supporting our credit in foreign countries, of promoting order and regularity in the public administration, and finally of giving a methodic impulse to commerce and industry, by freeing us from the disturbances which the unforeseen economic operations of the government have always produced; and although the revenues from the guano were not completely hypothecated by exterior considerations, it would always be one of the noblest patriotic tasks to endeavor that the state should draw its exist-

ence from natural sources; not only to avoid unprofitably consuming transitory riches, but principally to prevent conflicts, which, at certain moments, give rise to really ruinous complications. And, if this might occur under certain circumstances, it is hard to conceive what objection there can be not to consider the subject when we find ourselves abandoned to our own resources, and obliged to look for the means of existence among ourselves.

The government well knows that however palpable may be these truths, the subject will not the less serve as a pretext for the opposition which every administration is sure to meet; but if to conceal them would be dishonorable in private persons, how much more so on the part of a government which entertains profound convictions on the matter, and which is intimately persuaded that the problem which we are trying to solve to-day is not only the problem of the present, but also of the future. This resistance, far from detaining us on the road, should, on the contrary, make us redouble our efforts, as they show us that only by a firm intention to cement the public weal can we do anything worthy of the solemn circumstances under which the people intrusted to us this sacred deposit. If I, gentlemen, would but attend to my own tranquillity, and think less about the future of the country, I should calmly wait for the discussion of the last item of the budget, which would place you face to face with the deficit, that you might meet it by one of those blind authorizations to the executive power, which, in order to get over a momentary difficulty, compromise in a definite manner the permanent interests of the country. But the just expectations of the people, proceeding from the instinct of their own wants, can no longer be satisfied with this system of expediency; their aspirations, always in conformity with their real interests, make them hope from their representatives the definite solution of the principal problem of the future.

The adoption of the monetary measures, which have been proposed to the Congress by the government, will satisfy a double necessity, as not only are they intended to place our internal affairs on a better footing, but also to render possible the realization of extensive financial operations, without which our credit will be ruined and the execution of many important public works will be impossible. The emission of the last loan and the consolidation of the floating debt are measures whose urgency have become more imperious with the lapse of time since I first had the honor to call your attention to them. On these depends the continuance of the public works, and although many of them have been begun in complete forgetfulness of the fiscal situation of Peru, they cannot be abandoned at present without causing some grave inconvenience.

The sanction of the municipality laws, of the regulations to be observed in the elections, and in forming the civic register, will go far to satisfy the exigencies of the moment by correcting the abuses which signalize electioneering proceedings, and the various projects which are being discussed or which will be laid before you with reference to the administration of justice and public instruction, together with those of a financial character, are indispensable elements to enable the government to regulate the administrative labors of the period.

Among the other objects for which the Congress has been convoked, there are some to which I may be allowed to call its particular attention, and I shall begin with the treaties which Peru has lately celebrated with many friendly nations, and which have been presented to you for ratification. In making this recommendation, I have the pleasure to inform the Congress that the relations of Peru with foreign powers have never been better than at present, and that the new government, during the short time it has been in existence, has received the most unequivocal testimony of sympathy with the principles and policy it represents.

Coal-mining is about to be begun in Peru, favored at the same time by the greater consumption of combustible, by the high price which it fetches at present, and by the close proximity of the railways to the districts which contain this precious material. To fix the lawful mode of its extraction, and so to avoid the confusion which at present exists in our mineral legislation respecting it, is to remove the principal obstacle to the employment of capital in this industry.

The home minister will solicit special credits from you in order to foment European immigration; this is a most important matter, and should receive our preferent attention, the more so if we reflect that its immediate solution is connected with our material, moral, and political progress, and how unfavorable is our geographical position with regard to the principal centers of European immigration.

Legislators, to conscientiously fulfill the duties which the constitution and the people impose on the public authorities, is the surest mode to guarantee peace, and to cement constitutional order. The governments who carry out their mission without boasting of omnipotence, and with the firm purpose of legally administering public affairs, are those whose policy is worthy of our institutions and of our time.

Legislators, with your enlightened aid, with the resolution of the people to sustain, at all hazards, the liberties they have regained, and in a permanent fashion, I can augur to the country the necessary tranquillity in order to carry out the pacific and

progressive reform of our institutions, the re-establishment of an equilibrium in our economic situation, and that gradual growth of our riches under the shelter of peace, and of the laws by which we are ruled.

Reply of the president of the permanent commission of the legislature, Señor Muñoz, to the address of President Pardo.

CITIZEN PRESIDENT: The Congress has listened with the most lively attention, and with the greatest satisfaction, to the message you have just read, in order to inaugurate the extraordinary sessions to which it has been convoked by the executive power.

The representatives of the nation would have wished to discuss and resolve, in the term of their ordinary sessions, the questions which will occupy them during this new period of their labors; but, as you have well said, not having had the necessary facts and documents before them in time, they have preferred to devote their attention to those subjects where they saw the interests of the state were compromised.

The Congress cannot but felicitate itself that, in the two laws ultimately passed with regard to conscription and the national guard, the government has found the necessary guarantees to enable it to fulfill its duties. The national representation have the most unlimited confidence in the patriotic views of the government, and is convinced that it will know how to conserve unaltered the public order, institutions, and well-being; these are sacred interests, which have been intrusted to your zeal, and which I to-day again recommend to you, with the deepest interest, inspired by the misfortunes of our country.

The Congress is perfectly aware, as you have just reminded it, that the lamentable state of the exchequer should be attended to in preference, and should impose some sacrifices on the country; but, believe me, the difficulty will be overcome by confiding without reserve in the patriotism of the representatives of Peru, and in the abnegation of your fellow-citizens.

The Congress will take into consideration, with not less interest, the other subjects brought to its knowledge, and particularly of those which you have just recommended to its zeal.

You have concluded, sir, by giving a new proof of your civic virtues, and of your really republican sentiments.

You are not inspired by the bitter lessons of recent mournful events, which are the ruin of those governments who compound power with force, but by a profound conviction that the honorable and faithful fulfillment of duty is the surest pledge of peace, beneath whose protection the Congress hopes you will be able to keep the liberty reconquered at the cost of so many sacrifices entire, and to carry out the statutory reforms which the country looks for from the high authorities in the state.

No. 327.

Mr. Thomas to Mr. Fish.

No. 25.]'

UNITED STATES LEGATION,

Lima, Peru, December 27, 1872. (Rec'd Jan. 29, 1873.)

SIR: I regret exceedingly that I am called upon to communicate to your excellency the present state of public affairs in Peru, involving, as they do, the peace of the country.

A conspiracy, having for its object the overthrow of the existing government of Peru, was recently discovered, and has been checked by the arrest of several of the principal conspirators. Herencia Zeballos, who was first vice-president under the late President Balta, and who became President after the assassination of Balta, and passed the government into the hands of President Pardo, has been recently arrested at Arequipa, a large city in the interior, south of Lima, in company with a Mr. Gamio, brought to Callao as prisoners, and have been kept in confinement a few days, were on the 26th instant sentenced to complete a survey of the boundary-line dividing Brazil from Peru. Having been furnished

with commissions and ample means by the government, they were sent in a national vessel to their place of destination in the valley of the Amazon.

Other parties concerned in the conspiracy, Colonel La Coteria, Captains La Coteria, Calvera, and Raygada, were arrested at Payta, about five hundred miles north of this city, and are now in confinement at Callao, awaiting further proceedings in their cases.

General Seguio, the most efficient and most dangerous of the parties concerned in this movement, is yet at large. It is supposed he has gone to Cuzco, the old capital of the Indian empire, which is, as you are aware, east of the Andes. As this general is a Cholo, a mixture of Indian and Spanish, it is supposed he is charged to organize the Indian population, who chiefly inhabit the valley east of the Andes, against the government, and on that account his escape so far is to be very much regretted.

It is not known with certainty that these parties named have ever consented to or countenanced another diabolical conspiracy which came to light yesterday, and had for its object the merciless assassination of the President of Peru.

President Pardo has for some time been in the habit of going daily by railroad to Chorillos, about eight miles from Lima, for the benefit of a sea-bath. The cars in which the President travels are daily crowded with passengers. It has been well ascertained that five persons had so constructed a torpedo that by placing it on the track over which the President would pass on his way to Chorillos, yesterday, it could be exploded by electricity so as to blow the whole train of cars to atoms. Fortunately the plot was discovered, one of the conspirators arrested, who made confessions, whereupon four others were arrested, and are in prison awaiting their trial. It is understood that these movements for the overthrow of the constitutional government of Peru have for their object the placing by force in the presidential chair a Mr. Pierola, who was secretary of treasury under the late President Balta, and who is awaiting events out of the reach of all danger in the neighboring republic of Chili. It would seem almost incredible, nevertheless it is true, that the principal, if not the sole, cause publicly avowed, of these movements for the overthrow of the existing government of Peru have their origin in the patriotic, well-known determination of President Pardo and his principal advisers to reduce the army and curtail expenditures in other branches of the public service. These measures, so far as I can judge, are popular with the great body of the people, and obnoxious only to those who were profiting by large expenditures under previous administrations. That these measures and the authors and advisers of them are intensely popular in Lima, Callao, and the surrounding sections of Peru, may be inferred from the fact that when ex-Vice-President Zeballos arrived at Callao, but for the decided interposition of the authorities the populace of Callao would have burned him savagely in the bonfire which they had ready for the occasion.

Having had opportunities to judge of the men now at the head of the government of Peru, I still believe they will hold in check all the revolutionary elements of this unfortunate country to the close of President Pardo's term of office, in August, 1876.

Of the future of Peru beyond that no prudent man would venture a prediction.

I am, &c.,

FRANCIS THOMAS.

No. 328.

Mr. Thomas to Mr. Fish.

No. 40.]

UNITED STATES LEGATION,

Lima, Peru, February 27, 1873. (Received April 18.)

SIR: The inclosed translation of a conference between the minister of foreign relations of Peru and the minister resident from Colombia is respectfully inclosed for your information. After reading this protocol, I sought an interview with the minister of foreign affairs for Peru, and was assured that the omission to include the United States with the Spanish republics as parties to be concerned in constructing the proposed canal across Central America was, as I supposed it to be, accidental.

The minister embraced the occasion to express an earnest desire to see the Government of the United States take the lead in all measures which have for their object the improvement in the commercial and political condition of Spanish-American republics.

I am, &c.,

FRANCIS THOMAS.

[Inclosure 1.—Translation.]

Protocol of a conference held between the Peruvian minister for foreign affairs and the resident ambassador of Colombia relative to an interoceanic canal.

José de la Riva Agüera, Peruvian minister for foreign affairs, and Teodoro Valenzuela, resident minister of Colombia, having met in the foreign office with the object of taking into consideration the projected work of an interoceanic canal, the first said:

"The government of Peru has regarded with interest the plan of an interoceanic canal across the isthmus which divides the two continents of America, and believes that such a work will affect not only civilization and the commerce of the world in general, but in a special manner the political and commercial interests of Peru. Inspired by this idea in the treaties which were celebrated with the republics of Costa Rica and Nicaragua in 1857, certain stipulations were inserted tending to the establishment of an interoceanic highway, but unfortunately this agreement was not ratified, and this grand work remained a mere project. But that now, knowing that this question is being debated afresh, he should wish Señor Valenzuela to be good enough to tell him if the Colombian government had celebrated any treaty with any other government, or any private company whatever, for the carrying out of the work, and if, in case such an agreement had not been entered into, if they were disposed to enter into a negotiation with Peru, either to undertake the work jointly, or with the help of all the Spanish American republics which are interested in its completion, or, at least, with the participation of Peru, giving her the share in the profits and advantages to which her help might entitle her."

The Colombian minister replied:

That it was very satisfactory to him to see that the Peruvian government understood so well the importance of an interoceanic canal, whose results would doubtless be favorable to Peru, taking into consideration the daily increasing importance of its principal port, Callao, and the rapid progress of Peruvian commerce in the last few years.

That the Colombian government was not, at present, bound by any treaty in the affair, although few years ago two understandings were come to with the United States of America for the excavation of the canal, and the last was even approved of by the Congress of Colombia with certain modifications. The Congress of the United States had no opportunity of discussing it, and in the meantime the period for the exchange of ratifications had passed.

Therefore, Colombia has entire liberty of action in the matter, with regard to which there is, at present, no other practical fact worthy of mention than the permission granted to the American Government to send exploring parties into the States of Cauca and Panama, explorations which are about to be repeated, as has been announced by the press.

Colombia is therefore disposed to treat with Peru, and would see with the greatest pleasure this great undertaking, which would be the most important work of our age, carried out with the intervention of that republic and the remainder of America; but, if such a thing were not possible, she would be inclined to give Peru whatever intervention the latter might take in the work, giving her, of course, a share of the profits and advantages to which her participation might entitle her.

Colombia perfectly understands that the community of interests which a canal would establish between her and the republics that might take part in the undertaking would be a powerful and durable link in the chain of close union with which she desires to be bound to her sisters.

The foreign minister said: "That in view of the frank and friendly disposition which animates the Colombian government, and taking into consideration the fact set forth by Señor Valenzuela, that an American exploring expedition was about to visit the Isthmus, his government would like to add some competent persons to it in order that they might be informed of the practicability and cost of the work, if such an addition to this commission could possibly be made, and meanwhile, that is to say, until such intelligence had been obtained, which would be duly communicated to the Colombian government, the preliminary negotiations relative to the work could go on."

The Colombian minister said that he accepted, in the name of his government, the idea of sending a party of engineers to join the American exploring party, and whose admission the Colombian government would be glad to recommend. They would, besides, furnish every assistance in their power in order to further the ends of the commission, considering it as sent by themselves; hoping that the minister would be good enough to let him know in time the names of the parties who might be selected by his government.

The interview being at an end, it was resolved to draw up the present protocol, which has been signed in duplicate.

I. DE LA RIVA AGUERA.
THEODORE VALENZUELA.

No. 329.

Mr. Thomas to Mr. Fish.

No. 48.]

UNITED STATES LEGATION,
Lima, Peru, April 4, 1873. (Received May 5.)

SIR: I have the honor to inclose a statement prepared at my request showing, for the information of your excellency, the number of Chinese imported into Peru between the 1st of March, 1872, and 1st of April, 1873; also the number of deaths on board of ships within the same period engaged in this coolie trade.

Having made careful inquiry on the subject, I am prepared to say that the treatment of these unfortunate Chinese, thus forced violently from their homes by the landholders of Peru, by whom crowds of them are employed, is more harsh than that to which slaves in the United States were formerly subjected.

It will be a source of poignant regret to all who recognize the right of all men to life, liberty, and the pursuit of happiness, if the Peruvian government and other South American governments cannot be induced to abandon this abhorrent traffic.

The abolition of this terrible trade, I have thought, might be one of the beneficial results of a conference of diplomatic representatives of the United States and of the Spanish-American republics.

I am, &c.,

FRANCIS THOMAS.

[Inclosure 1.]

Table showing importation of coolies and fearful mortality on the voyage to Peru during year ending March 31, 1873.

Months.	No. of coolies shipped.	No. of coolies arrived.	No. of deaths on passage.	Flag.
1872.				
March	592	588	4	French.
April	1,505	1,492	13	Peruvian.
May	999	794	205	Do.
June.....	1,909	1,551	358	Holland and French.
July	None.	None.	None.	
August	650	593	57	French.
September	4,077	3,849	228	French and Peruvian.
October	1,082	845	237	Portuguese and Peruvian.
November	1,167	1,125	42	Peruvian.
December.....	1,410	1,327	83	French and Peruvian.
1873.				
January	None.	None.	None.	
February	None.	None.	None.	
March	878	712	166	Portuguese and Austrian.
	14,269	12,876	1,393	

No. 330.

Mr. Thomas to Mr. Fish.

No. 52.]

UNITED STATES LEGATION,
Lima, Peru, April 29, 1873. (Received May 26.)

SIR: I have the honor to inclose herewith a printed translation of the speech of President Pardo, made at the close of the extraordinary session of the Congress of Peru on the 28th instant.

I am, &c.,

FRANCIS THOMAS.

[Inclosure—Translation.]

Speech of President Pardo at the close of the extraordinary session, April 28, 1873, to the Congress of Peru.

HONORABLE REPRESENTATIVES: Before the Congress of 1872 closes its sessions, allow me to pay you a tribute of respect, which only is the testimony of the gratitude of the country for the intelligence, application, and elevated patriotism with which you have carried on your labors.

The republic needed, without doubt, in the legislature of 1872, more than at any other time, the exhibition of these great qualities; as in no epoch save the present had there accrued from the force of circumstances and the efforts of individuals more difficult and vital problems on whose solution, and even on the forgetting of the slightest of which, depended the fate of Peru.

In the political system, in the moral system, in the religious system, in the economic system, in each sphere of social activity, you found a grave situation to consider, a great obstacle to avoid or an imperious necessity to satisfy.

A government undermined by its own errors and sacrificed by its own children had sunk along with itself constitutionalism in the republic; a country constantly repressed in the exercise of its liberties dashed in to saved them at the moment they were disappearing, and, having saved them, had become an inexorable judge and a cruel executor in its own cause. A demoralized army, startled by the enormity of a crime to the perpetration of which it had been led by deceit; an administration relaxed by abuse, personal and even local ambitions awakened and kept up by an inconsiderate distribution of funds which had been hastily discounted on the future; an

augmented army and civil list, making the situation of the new government still more difficult; the income from the guano absorbed by the external debt; the home revenue of the country insufficient to meet its obligations, and the greater part of these anticipated; public works for enormous sums contracted and under construction without the necessary funds to realize them; public order compromised with the threat of twenty thousand workmen without work, and the mercantile interests of the country intimately connected with those of the contractor for these works; lastly, together with such terrible and complicated elements, a religious question, ready to break out as soon as it should be touched: these are the principal characteristics of the situation which we inherited, one of those situations in which Providence proves the virtues of a people, and it is for this that it bears in its bosom the lightnings of the tempests and the future of the nation.

Peru has given a new proof that he was able to save her, and she has been saved, thanks to the universal protection of the All-Powerful, and the harmony of will and effort with which the public authorities and people have acted; the former interpreting the aspirations of the last, and the latter helping the former with all their might.

But that union, that agreement whence effect and force have sprung, are themselves the result of a great moral and political cause which the public powers should study.

Peru in her administrative march found herself involved in the complicated crisis which I have just described, and is now undergoing a salutary change, in which new ideas, new sentiments, and new aspirations are creating new political forces and opening up new prospects.

This transformation, which we can call the resurrection of the public spirit, has exhibited this in all its fullness when the bands which confined it disappeared. It distinguished the public evil from the public good by criticizing the wants of the country, which knows them because it feels them. It entered with warmth into the struggle in aid of this good, which is its own, increasing a hundred-fold the elements of intelligence and will, whose concourse is necessary in the passage of great crises, teaching and strengthening with them the constitutional authorities who are their representatives, and constituting, in a word, a new political system, to which the feeling of legality on which public liberty reposes to-day will serve as a wide and immovable base. Neither let us be alarmed nor our convictions shaken by the abuses of them which we see—neither in the course of written words nor in the face of facts. These abuses are the shade of great events and a new proof of their existence. Let us only lament the deviations from the right road which they have caused, and the strange fate which Providence has bestowed in these latter times on those who have set up this ensign in opposition to its designs.

Peru has been desirous of realizing the republic, and has been doing so for some time, swayed between incredulity and passion, sustaining at first, within the limits of the law, an obstinate struggle against all the elements of authority, combined to oppose the rights of the people, and afterward defending with her powerful will the constitutional edifice which she had raised from its ruins, by her activity only causing every attempt to overthrow it to fail, and proving herself a determined upholder of constitutional order, tolerating at the same time excesses of liberty with the tranquillity of strength, and solely deploring them for the credit of the republic.

This regeneration of the public spirit, properly understood and directed, and seconded by the proper authorities, is the true secret of the success of your labors, and of the vigor with which you have constituted the republic.

The first two laws which you passed were those of the national guard and of the municipalities. Both obey the same sentiment, are the fruit of the same conviction, respond to the same necessity. The people in Peru is an element of order and the safest rampart of the institutions; they are directly interested in the progress of the country, which is inseparable from peace, and they are, therefore, and at the same time, the most enthusiastic and powerful support and co-operators in the public administration.

The national guard law has called on them to exercise the first mission; the municipal law has removed the obstacles to the carrying out of the second.

The realization of the first has destroyed by itself alone the fears entertained by those who have not yet perceived the internal revolution that is going on in our mode of political being; it has caused them astonishment to see the haste with which the citizens have come forward at the call of the law, without considering that it is the law which has responded to the call of the citizens.

I hold to the belief, in spite of the many difficulties which the realization of the second will have to encounter, and although some towns may stray from its practice, that those who have placed themselves at the head of their brethren will teach them the method of exercising the very ample rights conceded by this law, in which are recognized three municipal entities: those of the district, of the province, and of the department. The doors of the institutions are open even to foreigners; the right of dictating regulations is conceded to popular bodies; they may impose taxes and raise loans without needing the approbation of Congress or of the government; local admin-

istration in all its branches, except one, is given up to them, and that is the judicial, whose organization is fixed by the constitution; and, in one word, the most ample rights with which the municipal institution has been organized in other nations have been established.

The national guard and municipal laws will be the memorable works of the present legislature, for they constitute the foundation of the republic; of that republic in reality which will raise itself more proudly the more it is opposed.

However sufficient these laws might be for the glory of the legislature of 1872, they are not the only claims with which history will present you to your fellow-citizens.

The economic situation of the country has absorbed the most considerable part of your time and labor, and, thanks to a series of dispositions in which it is grateful to me to recognize the union of the members of the chambers in one sole aspiration, measures have been adopted by the Congress from which we may look for the results which you have anticipated.

Our credit being menaced by the emission of a loan whose negotiation was twice interrupted, public works contracted for, whose cost greatly exceeds the sum voted for them; a considerable interior floating debt, payable at sight, pending; the product of the guano claimed and absorbed by the external debt and anterior obligations; the natural resources of the country utterly inadequate to tend to even the ordinary exigencies of the administration; our economic horizon lowered until on every side a disastrous crisis was threatened which only your prudent and intelligent action, the confidence which the Congress and the government have been fortunate enough to inspire in the uprightness of their acts, and the resolute aid offered by the people, from the humblest artisan up to the most powerful institutions of credit, have been able to dispel. All have suffered, and all have waited with faith. Their confidence will not be abused.

You began by respecting the rights of our foreign creditors, and you have not considered for your internal necessities the proceeds of the guano which is compromised abroad. By this act you have saved our credit, and you have found means to cover the deficit in the charge for railways without adding to the public burden, but on the contrary obtaining concessions in the contracts already celebrated.

Turning our eyes to the interior, you have increased our national income by the modification of the custom-house tariff and the monopoly of saltpeter, measures which you have sustained with that vigor and abnegation which only convictions inspired by the necessities of the country can give. By these you have called into being an internal credit in the true acceptation of the word, for you instilled confidence into hearts afflicted during the last twenty years for the economic future of the country. After such measures as these, it matters very little that an inevitable deficit should appear in the budget for the next two years, as it will appear, although reduced to one-half, in the following financial period. What was of importance to all was to know if Peru had sufficient patriotism to face at the same time the economic and political crises in her existence which we are now undergoing; and she has had it. I am confident that this deficit, the expression of the crisis in which the period of my rule will serve as an epoch of transition. I am confident, I say, that this deficit will shortly be met—do not wonder at the phrase—by the virtues of the people; by their energy to sustain peace; by their devotion to labor, which will raise the sum of our national productions—the only real and copious fountain of a State's prosperity.

To this end will contribute powerfully many of the laws of the present legislature, and especially that which has for its object the favoring of foreign immigration, affording to the immigrants every kind of facility to enrich our country with their habits and ideas and our people with their race.

Your law modifying civil proceedings, that which decrees central prisons in order to render effective the repression of crimes at present frequently unpunished for want of secure jails; that for the establishment of normal schools, in order to educate preceptors of both sexes; that which votes the necessary funds for bringing European professors to our schools and colleges, and Sisters of Mercy for our charitable institutions, show by themselves alone that moral necessities, which, be it said in their honor, is more desired among American nations than material ones, has not less merited your attention than our political, administrative, and economic interests.

Industry, in its most important branches, has also had a share in your laborious session. Mining will find, in the new legislation concerning coal-mines, with which our territory is covered, principles which will remove many of the obstacles opposed to the development of this great wealth by laws inadequate to the proportions of modern undertakings in mining. The resolution, which, notwithstanding our difficult financial circumstances, you have taken to devote a large sum during the next years to the construction of bridges, roads, country prisons, and school-houses, will also help to the same end; more particularly, the establishment of the normal school of agriculture, which will furnish to this, the principal source of our riches, elements which the isolated agriculturist cannot encounter, such as the crossing of the breed of cattle, the introduction and trial of new methods and improvement of the existing systems, es-

pecially in the production of silk, and for the education of intelligent laborers, of which our farmers stand so greatly in need.

Finally, the laws which authorize the establishment of some branch lines of railway, which guarantee an interest on the capital that may be destined for the laying of a sub-marine cable from Panama to Peru, will augment our productions and draw closer the links which bind us to other nations.

In order to arrive conveniently at this last object, so much in harmony with our feelings, with our ideas, and with our advantage, numerous international treaties have merited your approbation. Among them may be distinguished, for its importance to our prosperity and credit, the conventions celebrated by Portugal to settle the conditions which civilization and justice demand in the Asiatic immigration, with which most essential object the government, from the very first days of its advent to power, has carried on grave diplomatic correspondence, which shall regulate the proceedings of Peruvian commerce with the nations of the East.

Nor can we look for less important results from the law which determines the organization of the army on the plan of conscription and active service of short duration, which will make this contribution more general and its burdens lighter. The executive is as anxious as is the Congress about the organization of our army, not only at present in the choice of worthy chiefs and officers, but also in the future, by opening the military college to young officers whose devotion to study is a guarantee of the hopes that may be formed of them. The very contrast which the credit of the military institution had to suffer in the bitter days of July has disposed the minds of its chiefs to elevate it anew, of which daily testimony is given in discipline in barracks and in the defense of the institutions. The executive is waiting to see the new municipalities established, to dismiss a part of the actual army and then raise it to its legal strength by conscription.

Lastly, the religious question which originated in the illegal appointment of an archbishop for Lima, and which threatened to assume most alarming proportions, has been simply solved, thanks to the delicate prudence with which you treated it and the paternal hearing given to our representation by the Father of the Faithful, with a benevolence which has even more increased the sentiments of respect and affection entertained toward him in our country.

Your last word has been one of pardon and oblivion for the faults of all; let us hope to see with this the sacrifice of every passion on the triple altars of the peace, the honor, and the happiness of our country.

Legislators, such is the *resumé* of your more important labors. They now permit you to return to your homes, leaving the republic in a very different position to that in which you found her. Men's minds are calm in the full enjoyment of their liberties; peace is assured as it never was before in Peru, and assured by the conviction of the popular will and not by force; the more important questions of policy and administration have been settled; the confidence of commerce and industry in the future is restored. The republic therefore offers to-day every symptom of peace, certainty in her present, and hope in her future resources.

Your ideas and sentiments being identical with those of the executive power, the laws you have made is the programme of my government. In this great work I count, as I have hitherto done, on the support of the people, and I hope and wish for the help of well-meaning men of all parties.

May Providence, which has inspired the people of Peru with the sentiments of peace, which has guided you in your arduous but glorious task in the path of justice and public profit, continue its omnipotent protection to my government in carrying out your measures, however numerous may be the thorns strewn in my path. If the former constitute your glory, the latter will be mine; both are almost always necessary for the salvation of nations.

MANUEL PARDO.

XXVII.—RUSSIA.

No. 331.

Mr. Schuyler to Mr. Fish.

No. 43.]

LEGATION OF THE UNITED STATES,
St. Petersburg, Dec. 21, 1872. (Rec'd Jan. 16, 1873.)

SIR: After the almost complete inaction here in political affairs, several subjects have suddenly come up which produce considerable commotion in government circles.

There is a difficulty between England and Russia with regard to Central Asia.

The conquests of Russia in Central Asia have been made, so far, from unavoidable necessity, and often in spite of the strict orders of the government. It has always been necessary in dealing with the half-civilized countries and tribes who inhabit what was formerly called Independent Tartary to preserve the prestige of the Russian arms and the Russian authority. There have been constant difficulties and constant attacks on Russia by these countries. Russian merchants and officers have been taken prisoners, have been tortured and held in strict captivity by the Central Asiatic Khanates, and each successive general has felt that he must punish these outrages and cause the Russian name to be respected.

But, to put a limit to these incursions and difficulties, it was resolved to join the frontiers of Orenburg and Siberia by a line that could be easily defended, and in following out this design, Turkistan and Tchemkent were taken in 1864. General Tchunagef, who was in command, advanced still further and took Tashkent in 1865, which led to further difficulties, for it imposed on Russia a conquest she did not desire, and rendered subsequent operations almost a necessity. Tchernagef was removed and succeeded by General Romanofsky, who, contrary to strict orders, was forced by the holy war to become active, and took Khodzheht. He was recalled in disgrace, and General Kryzhanofsky, the governor-general of Orenburg, took command and captured Ara Tubé and Dzhizak in 1866, to strengthen himself on the line of the Syr Darya, (Jaxartes.) Turkistan was then (1867) made a separate province under the command of General Kaufmann, who gave a solemn promise not to advance, and Kryzhanofsky remained at Orenburg. In spite of this General was compelled to take the field in the spring of 1869, and captured Samarcand, reducing Bukhara almost to the condition of a vassal province. The conquests of General Kaufmann were held at first temporarily, but were finally accepted and incorporated into the empire. The Khan Kokan, who had always been hostile to Russia, now became quite friendly and allowed Russian merchants and Russian trade free access to his dominions. With the capture of Tashkent, Russian trade in Central Asia very greatly increased, and the importance was at once seen of securing the country as a market for Russian manufacturers, and of keeping out English trade. The trade of Kashgar and Yarkand, and of Eastern Turkistan, was especially coveted, but it was the policy of Jakul-Beg, the Atalik Ghazee, the chief who had just wrested the country from Chinese rule, to keep out the Russians.

After many difficulties the Russian measures have been at last so successful that very advantageous commercial treaties have, within the last few months, been concluded both with Kokan and Kashgar.

The point where the Russian policy has least prospered is Khiva. This khanate has remained continually hostile; the release of Russian prisoners has been refused, Russian caravans have been attacked and plundered, and the Turkomans and Khirgheez have been incited to insurrection and hostility. Every overture of Russia has been rejected. In order better to be able to take active measures the Russians, about two years ago, occupied and fortified Krasnovodsk, on the east side of the Caspian. Expeditions were sent out from time to time, nominally to keep the Kirgheez in order, but really to feel and explore the country. Finally, this last summer, an expedition was sent against Khiva. Colonel Markesoff traversed the steppes without difficulty and got near to the city, where he was attacked by the Khivan troops, and owing to his negligence

and contempt for the enemy he was cut off, lost his camels and horses, and was obliged to retreat with his command.

The news of this disaster has just arrived, and has caused considerable agitation. At a council held on Tuesday, at which the Emperor presided, it was resolved to send out a strong expeditionary force against Khiva, and the question now under discussion is about the plan and route. Three separate expeditions are proposed: one from Tashkent, one from Orenburg, and one from Krasnovodsk. It is said that the Grand Duke Michael, with part of the army from the Caucasus, will join the expedition from Krasnovodsk. It is said that the vote in the council stood 35 for the capture of Khiva to 9 against it. Prince Gortchacow was in the minority, believing that it would be better to punish Khiva than to capture it.

In the mean time the English have been taking alarm. There has been for some time an agitation in the press, and in especial from those interested in India, that it would be necessary to put a stop to the Russian advance in Central Asia, before the Russian and English territories become conterminous and India was endangered. It was proposed at one time that Russia and England should agree on lines beyond which they would make no conquests; but this was found impossible. An idea to form a belt of neutral states and turn Afghanistan into a sort of Switzerland was equally chimerical. Others proposed the stronger and more dangerous measure of conquering Afghanistan. The English government long resisted these clamors, allowing things to take their course, even repulsing the advances of the Emir of Khiva.

At last, however, England has decided on action, and about three weeks ago sent a note to the government of the Emperor, in substance that she would recognize as the northern boundary of Afghanistan the river Amu-Darya (Oxus) from Kerki to the source, and that on any infringement of this boundary she would allow the ruler of Afghanistan to make war on Russia, and eventually assist him.

The country in question includes the provinces of Vakhan and Badakshan, which are claimed by and belong to Bukhara, but pay a small tribute to the Emir of Cabul. Through them goes a high road to Kashgar and Yarkand, which is of great importance to Russia for commercial purposes, and there is also a pass through the mountains into Cashmere. Here is, in fact, a key to India.

The Russian answer was discussed at the council of Tuesday, and was sent off yesterday by special messenger, and an extra English courier went at the same time with important dispatches. I understand that the answer of the Russian government is soft but evasive. They say that they wish to be on friendly terms with England, and not to have any difficulties on this subject; that it is greatly to the advantage of the two countries to act together in Asia, and to have a good understanding. They disclaim any intention of conquest in this region, but at the same time deny any right of Afghanistan to these provinces, though admitting that a small tribute is paid, but assert that they belong to their ally, the Emir of Bukhara. Nothing was said in the English note about Khiva, and it is not the intention of the English government to contest that.

It is hardly believed here that England will maintain her demands to the end, or will run the risk of an Asiatic war to enforce them.

I have, &c.,

EUGENE SCHUYLER.

No. 332.

Mr. Schuyler to Mr. Fish.

No. 50.]

LEGATION OF THE UNITED STATES,
St. Petersburg, January 8, 1873. (Received February 7.)

SIR: I am now in a position to inform you more exactly of the details of the negotiations between England and Russia, of which I spoke in my dispatch No. 43.

It appears that Mr. Forsyth was sent here in 1869, by the British government, to endeavor to come to some arrangement with the Russian government with regard to the extent of their conquests in Central Asia and their ultimate limit. After some negotiation it was agreed that so long as Russia respected the boundaries of Afghanistan, or rather the dominion of the Emir of Cabul, Shere Ali Khan, for so long the Indian government would restrain Shere Ali Khan from attacking or interfering with Russia. It was at first proposed that the dominions of Shere Ali Khan should be considered those which he inherited from his father, Dost Mohammed Khan, but an additional condition was made that they should be now in Shere Ali's actual possession.

This result was come to without much difficulty; but when the question arose, What are the provinces which the Shere Ali received from Dost Mohammed, and of which he has actual possession? there were divergencies of opinion, and especially with reference to Badakhshan and Vakhán. It was finally decided to refer this question to General Kaufmann, the Russian governor-general of Turkestan, who, being near the spot, could have access to more accurate sources of knowledge. General Kaufmann having made no report, and a note addressed by Sir Andrew Buchanan, the British ambassador here, to Prince Gortchacow in November, 1871, remaining without a satisfactory answer, Earl Granville, in a dispatch dated October 17, 1872, informed Lord Augustus Loftus, the present British ambassador, of this state of facts, and stated further that, having heard nothing more from the Russian cabinet, the British government had used its own methods of investigation, and had come to the conclusion that Badakhshan and Vakhán were part of the dominions of Shere Ali left to him by Dost Mohammed, and that the northern boundary of Afghanistan begins at Lake Sari-kul, the source of the river Payja, the main branch of the Amu-Darya or Oxus, runs thence along the river Payja to its confluence with the Koktchas, and thence along the Oxus or Amu-Darya to Khodja-Sala, and thence southwesterly to a point at or near Puli-Hatun, on the well-known Persian boundary, including Meimana and two or three other disputed provinces. Earl Granville further said that the Indian government had communicated this conclusion to the Emir of Cabul, and had informed him that he might consider himself at liberty to defend himself in case the territories south of this line should be invaded by Russia. Lord Augustus Loftus was instructed to communicate this dispatch to the Russian government.

The reply of the Russian government consists of a dispatch from Prince Gortchacow to Count Brunnov, the Russian ambassador at London, dated December 7-19, 1872, inclosing a report by General Kaufmann and another by Colonel Struve, who had been delegated by him to study the question.

Prince Gortchacow, after referring to a previous dispatch on the same subject of the preceding year, speaks of a desire of the imperial government to have nothing but the most frank and cordial relations and explanations with the British cabinet, and of the advantage it will be to

both powers that their relations in Central Asia be placed on the firm footing of a mutual good understanding. He then excuses General Kaufmann for not reporting sooner, on the ground of the disturbed relations of the countries in Central Asia, and the fact that it is impossible to obtain accurate information except from persons who are on the spot; and that he has not wished to send agents to Badakhshan, even on a scientific mission, for fear that his action might be misinterpreted by the British cabinet as well as by the native government. The Prince then refers to the reports by General Kaufmann and Colonel Struve for such information as they have been able to gather on the facts of the case. As to the provinces on the northwest frontier of Afghanistan, as they are separated from Russia by large deserts and wastes, he will waive any question and will accept the English assertion that they belong to Afghanistan, but he denies that Badakhshan and Vakhan are now in the actual possession of Shere Ali Khan, or were inherited by him from Dost Mohammed Khan.

It is true, the Prince says, that Dost Mohammed on one occasion interfered in the affairs of Badakhshan in consequence of an intrigue in the family of the reigning Emir, and for a money consideration supported one claimant against the other and maintained him on the throne; but the Prince soon refused to pay the money, and Dost Mohammed was unable to enforce its collection. He never occupied Badakhshan by his troops, nor maintained officers there. In the same way, in 1867, Shere Ali was called in by Mahmud Shah, the nephew of Jahandar Shah, the reigning Emir. Jahandar Shah was deposed and Mahmud Shah put in his place, who promised to pay a yearly sum of money to the Afghans. This payment he has now refused to make, and the Afghans, though much stronger in the point of actual force, have been unable to collect, and exercise no authority of any kind in Badakhshan. Jahandar Shah, who had taken refuge in Shagnan, is now intriguing with the Afghans to be reinstated, and promises, in his turn, a tribute in recompense. This information was obtained from a former minister of the Emir of Balkh, an Afghan feudatory. There is nothing to show that Vakhan is a feudatory of Badakhshan, as it neither pays tribute nor supports officials, and it is certainly not an Afghan dependency.

Since this dispatch of Prince Gortchacow, which, with the inclosures, was communicated to Earl Granville, there has been no new exchange of notes between the two governments, but Count Schouvaloff, the director of the secret police, has gone to London on a mission connected with this question.

I can only add that the geography and political condition of Badakhshan and Vakhan are inshrouded in the deepest darkness, and hardly two geographers agree on the subject.

As I stated in my previous dispatch, the question of Khiva is officially ignored by the British cabinet. In the mean time the Russians are pushing their preparations for an active campaign, partly in consequence of the disagreeable intelligence that 15,000 Khivans are roving over the steppes between the Caspian and Aral Seas, plundering the friendly Kirghiz and exciting them to rebellion, and threatening the forts on the Emba, and even Orenburg itself, and the post-road to Tashkent. General Kaufmann, who will have chief command of the expedition, is still here, and will not leave before the 20th January. He is waiting to consult with the Grand Duke Michael, who is expected shortly. The expedition will consist in all of about 9,000 men and 40 guns, and will be divided into three columns: one starting from Kramovodsk, on the Caspian, will go direct to Khiva by the nearest route across the steppe; one will

go along the old caravan-road from Orenburg, and the third, under General Kaufmann in person, will proceed from fort No. 1, on the Syr Darya, through the country east of the Aral Sea. Each will carry its provisions, forage, &c. They will probably start about the middle of March. The Grand Duke Nicholas, son of Constantine, will take part in the expedition.

I have, &c.,

EUGENE SCHUYLER.

No. 333.

Mr. Schuyler to Mr. Fish.

LEGATION OF THE UNITED STATES,
No. 58.] *St. Petersburg, January 29, 1873. (Received Feb. 27.)*

SIR: The violent tone of the English press on the Central Asian question and the consequent agitation here have induced the government to publish a communication on the negotiations in the official journal, of which I inclose a translation herewith. From all that I can learn, Count Schouvaloff, while in England, used all his efforts to bring about some sort of an arrangement between the two cabinets, and it looks now as though the Russian government would even be willing to appear convinced by the English arguments and yield the points at issue.

The English cabinet is very anxious to come to an agreement as soon as possible, and gain at least the appearance of a victory in order to present something to Parliament to counterbalance the defeats in the arbitration on the Alabama, San Juan, and Delagoa Bay questions.

Whichever way the controversy may be settled, Russia will, I think, be the real gainer. If she refuses to admit the northern boundary of Afghanistan, as the English claim it, England can only continue to re-assert what she has already said, and prepare to defend Afghanistan whenever the Russian cabinet choose to precipitate matters, and it will, of course, select the time most inconvenient to England. If, on the other hand, Russia is willing to agree that all south of the Oxus belongs to Afghanistan, she is able to show to the people of Central Asia that England is pursuing a common policy with her and has agreed to divide Asia with her. Either way is bad for England.

The restrictions on the Russian press have been in part removed, and the papers are beginning to print articles conceived in the spirit of the official communication, all of them blaming English public opinion for being so excitable and violent on insufficient grounds, and calling the whole thing an intrigue against the present administration.

I have, &c.,

EUGENE SCHUYLER.

[From the Government Messenger.]

Government communication.

But a short time ago it was possible to remark with satisfaction the calm, sound judgments and the moderate tone of the majority of the English press with regard to affairs in Central Asia.

We now see with some astonishment that this question has of late been treated very sharply in the English papers.

It is impossible to say whether this persevering attitude is based on anything real, and whether it truly represents the impressions of public opinion, or whether the English press is led on by party spirit and the desire of gaining popularity. But in any case it is necessary to declare that the English press has no reason for consecrating special attention to Central Asian affairs.

The negotiations between the imperial and the British cabinets with regard to the affairs of Central Asia are nothing new.

They arose fully three years ago and have constantly had a very simple and friendly character, which has not changed up to the present time.

From the very beginning there has been a full agreement between the two cabinets with regard to their mutual mode of action in Central Asia for the maintenance of peace there, and also for keeping good relations between themselves. They have equally come to an agreement with regard to their mode of action on each subject for carrying out this peaceful aim. It remained only to fix its bounds, a problem by no means easy in view of the disturbances which have reigned till now in these little-known countries. The exchange of ideas which is taking place between the two cabinets has no other end in view; and we must once more repeat that it has the most friendly character. There is no essential difference in the views of the two cabinets. There is no doubt that when the end in view has been once agreed on, it will be very easy for them to agree on the practical application of a principle which equally interests both sides.

No. 334.

Mr. Schuyler to Mr. Fish.

[Extract.]

LEGATION OF THE UNITED STATES,

No. 61.]

St. Petersburg, February 4, 1873. (Received Feb. 27.)

SIR: The difficulty between England and Russia has been completely settled, as I intimated in my dispatch No. 58 was probable, by the adhesion of Russia to the English views. Mr. Michell returned from London on Tuesday last with a dispatch from Lord Granville, expressed in very mild and conciliatory language, which repeated the views stated in the original dispatch of October last and added arguments in favor of their justice. When the English dispatch was handed to Prince Gortchacow he told Lord Augustus Loftus that he need have no apprehensions, and two days later he informed him that he had sent a dispatch to Count Brunnov acknowledging the Oxus as the northern boundary of Afghanistan.

Although this seems a diplomatic victory for Great Britain, I very much doubt whether it will prove so in reality. Evidently Prince Gortchacow would not have yielded so easily if he had not seen some advantage in doing so. It is of course for the Russian interest to show the minor Khanates of Central Asia that England and Russia are no longer in opposition, and that all they can hope for will be what Russia will choose to grant them. At the same time, England, by making herself in a measure responsible for the actions of Afghanistan, has practically brought her frontiers nearer to those of Russia, and it will be possible at any time for the Russians, if so disposed, to excite troubles on the border which will lead to blame of the Afghans, to mutual recrimination and to eventual difficulties.

If I am not much mistaken, this agreement will be violently attacked in the approaching session of Parliament.

* * * * *

The rumors about a secret treaty with Persia, ceding territory, and of difficulties excited by the Russians in Afghanistan, evidently rest on no foundation.

I have, &c.,

EUGENE SCHUYLER.

No. 335.

Mr. Schuyler to Mr. Fish.

No. 62.]

LEGATION OF THE UNITED STATES,
St. Petersburg, February 17, 1873. (Received March 12.)

SIR: The London Times of the 13th, which arrived this morning, has the full text of the recent correspondence between the Russian and English governments on the subject of Central Asian affairs. This correspondence, which I inclose, (marked A to G,) fully bears out what I have before written to you about the negotiations.

It is evident that Count Schouvaloff, on his visit to London, must have made known to Earl Granville that Russia was ready to come to an agreement with England if only the way were smoothed for her, which will account for the conciliatory and, in some respects, weak tone of Earl Granville's dispatch of January 24, (F,) as compared with the firm dispatch of October 17, (A.) It would, perhaps, have been better for English interests if Lord Granville had been content to rest the matter with his first dispatch and consider it as settled without asking for any consent on the part of Russia. But as the interests of civilization demand order in the countries of Central Asia, if panics can be allayed in England by an agreement which implicitly allows Russia to do as she chooses north of the Oxus, it is well that such an agreement has been arrived at.

You will notice that Prince Gortchacow, in his last dispatch, (G,) lays much stress on the engagement of the English government to keep Afghanistan quiet. This engagement may yet bring England into great difficulties.

The passage in Lord Granville's dispatch of January 8, (E,) in which he expresses a wish to avoid discussion in Parliament on the proposed agreement, occasions much surprise.

Count Schouvaloff appears to have given assurances that it was the Emperor's wish not to occupy Khiva permanently, but his language is ambiguous, and he does not specify whether it is the territory or the town of Khiva which will not be occupied. It will be easy for the Russian government to find reasons of necessity for occupying Kungrad or the mouth of the Oxus.

I have, &c.,

EUGENE SCHUYLER.

A.

CORRESPONDENCE ON CENTRAL ASIA.

Earl Granville to Lord A. Loftus.

No. 1.]

FOREIGN OFFICE, *October 17, 1872.*

MY LORD: Her Majesty's government have not yet received from the cabinet of St. Petersburg communication of the report which General Kaufmann was long since instructed to draw up on the countries south of the Oxus, which are claimed by the ruler of Afghanistan as his hereditary possessions.

Her Majesty's government have awaited this communication in full confidence that impartial inquiries, instituted by that distinguished officer, would confirm the views they themselves take of this matter, and so enable the two governments to come to a prompt and definite decision on the question that has been so long in discussion between them.

But as the expected communication had not reached them, and as they consider it of importance, both for the maintenance of peace and tranquillity in Central Asia and for removing all causes of misunderstanding between the imperial government and themselves, I will no longer delay making known, through your excellency, to the imperial government the conclusions at which Her Majesty's government have arrived, after carefully weighing all the evidence before them.

In the opinion, then, of Her Majesty's government, the right of the Ameer of Cabul (Shere Ali) to the possession of the territories up to the Oxus, as far down as Khodja Saleh, is fully established, and they believe, and have so stated to him through the Indian government, that he would have a right to defend these territories if invaded. On the other hand, Her Majesty's authorities in India have declared their determination to remonstrate strongly with the Ameer should he evince any disposition to overstep these limits of his kingdom.

Hitherto the Ameer has proved most amenable to the advice offered to him by the Indian government, and has cordially accepted the peaceful policy which they recommended him to adopt, because the Indian government have been able to accompany their advice with an assurance that the territorial integrity of Afghanistan would, in like manner, be respected by those powers beyond his frontiers which are amenable to the influence of Russia. The policy thus happily inaugurated has produced the most beneficial results in the establishment of peace in the countries where it has long been unknown.

Her Majesty's government believe that it is now in the power of the Russian government, by an explicit recognition of the rights of the Ameer of Cabul to these territories he now claims, which Bokhara herself admits to be his, and which all evidence yet produced shows to be in his actual and effectual possession, to assist the British government in perpetuating, as far as it is in human power to do so, the peace and prosperity of those regions, and in removing forever, by such means, all cause of uneasiness and jealousy between England and Russia in regard to their respective policies in Asia.

For your excellency's more complete information, I state the territories and boundaries which her Majesty's government consider as fully belonging to the Ameer of Cabul, viz:

1. Badakshan with its dependent districts; Wakhan, from the Sarikal (Woods Lake) on the east to the junction of the Kouktcha River with the Oxus, (or Penjah,) forming the northern boundary of this Afghan province throughout its entire extent.

2. Afghan Turkestan, comprising the districts of Kundus, Khulm, and Balkh, the northern boundary of which would be the line of the Oxus, from the junction of the Kouktcha River to the post of the Khodja Saleh, inclusive, on the high road from Bokhara to Balkh. Nothing to be claimed by the Afghan Ameer on the left bank of the Oxus below Khodja Saleh.

3. The internal districts of Aktchi, Leripool, Meimané, Chibbirgan, and Andkhai, the latter of which would be the extreme Afghan frontier possession to the northwest, the desert beyond belonging to the independent tribes of Turcomans.

4. The western Afghan frontier, between the dependencies of Herat and those of the Persian province of Khorassan, is well known and need not here be defined.

Your excellency will give a copy of this dispatch to the Russian minister for foreign affairs.

I am, &c.,

GRANVILLE.

B.

Prince Gortchacow to Count Brunnow.

[Communicated to Earl Granville by Count Brunnow, December 29.]

No. 2.]

ST. PETERSBURG, December 7, 1872.

M. LE COMTE: Your excellency has already received a copy of Lord Granville's dispatch of the 17th of October, which was communicated to us by Lord A. Loftus, by order of his government.

It refers to the affairs of Central Asia. Before answering it, it becomes necessary for me to recapitulate the different phases of the negotiation between us and the English cabinet upon this question.

The two governments were equally desirous to forestall any cause of disagreement between them in that part of Asia. Both wish to establish such a state of things as would secure peace in those countries and consolidate the relations of friendship and good understanding between the two governments.

They had, consequently, come to an agreement that it was expedient to have a certain

"intermediary" zone, for the purpose of preserving their respective possessions from immediate contact.

Afghanistan seemed well fitted to supply what was needed, and it was consequently agreed that the two governments should use all their influence with their neighboring states toward preventing any collision or encroachment one side or the other of this "intermediary" zone. All that remained, in order to make the agreement between the two cabinets as complete in fact as it already was in principle, was to trace the exact limits of the zone.

It was here that a doubtful point arose. The founder of the Afghan state, Dost Mahammed Khan, had left behind him a state of confusion which did not allow of the territorial extension which Afghanistan had acquired at certain moments of his reign being accepted as a basis.

It was consequently agreed that no territories should be taken into account but such as, having formerly recognized the authority of Dost Mahammed, were still in the actual possession of Shere Ali Khan.

It thus became necessary to ascertain, with all possible accuracy, what were the territories in his actual possession.

For this purpose it was requisite to have positive local data, which neither government possessed, with reference to these distant and imperfectly known countries.

It was agreed that the governor-general of Turkestan should be instructed to take advantage of his residence in the proximity of and his relations with the neighboring Khanates to collect all the information necessary to throw light upon the question, and to enable the two governments to come to a practical decision with the facts before them.

Such was the point, M. le Comte, as your excellency will recollect, at which our negotiations with the English cabinet had arrived.

In conformity with this decision M. l'Aide-de-Camp Général de Kaufmann had taken every possible measure toward carrying out this preliminary investigation. Owing, moreover, to difficulties arising out of the distances involved, the excessively complicated nature of the points to be elucidated, the absence of genuine sources of information, and the impossibility of a direct inquiry, he was unable to accomplish his task as speedily as we, no less than the government of Her Britannic Majesty, would have desired. Hence the delay pointed out in Lord Granville's dispatch.

We have, however, already drawn attention to the fact that the cause of the delay is to be found in the serious attention which the imperial cabinet devoted to this affair. It would have been easy to rest content with hastily collected notions which, later, would have given rise to misunderstandings. We preferred to study the question conscientiously, since it was one of giving a solid and durable basis to the political organization of Central Asia, and to the good and friendly relations, present as well as future, which the two governments aimed at establishing between them on that basis.

At the beginning of last October the imperial ministry was able to announce to Lord A. Loftus and to your excellency that the councillor of state, Struve, to whom these inquiries had been intrusted, had at last just arrived at St. Petersburg, and that as soon as the materials he had collected had been put into shape the result would be communicated to the cabinet in London. It was while this work was going on that Lord Granville's dispatch was communicated to us, informing us of the opinion which Her Britannic Majesty's government had thought fit to form upon the point in discussion. The imperial cabinet, having in view the spirit of the agreement, arrived at in principle between the two governments, none the less thinks it its duty to transmit to the government of Her Britannic Majesty the particulars collected on the spot by order of the governor-general of Turkestan, and to lay before them most frankly the conclusions which, in its opinion, are their natural consequences.

These particulars and conclusions are contained in the letter, copy of which is inclosed, which M. l'Aide-de-Camp Général de Kaufmann has just addressed to me, and in the memorandum which forms its inclosure.

I will sum them up.

The question to be settled had two sides:

1. To ascertain the real state of possession at this moment, so far as it is possible to prove it in those countries.

2. Starting from this *status quo* as a basis, to seek for a line of demarkation to be traced which will best answer the object of the present negotiations; that is, to remove as far as possible all cause of conflict or mutual encroachment between the neighboring khanates, and consequently assure, as far as can be done, the state of peace which henceforward the two governments should respectively use all their influence to cause to be respected.

Looking at the question from these two points of view, its study led to the following conclusions:

1. That to the north the Amou Daria forms, in fact, the proper frontier of Afghanistan from its confluence with the Kouktcha as far as the point of Khodja Saleh.

So far our data confirm the opinion of the government of Her Britannic Majesty, and the frontier in question seems the more reasonable that it can give rise to no disputes on the part of the inhabitants of the banks of the Amou Daria.

2. To the northeast the data we have collected give the confluence of that river with the Koukchea as the limit of the districts over which Shere Ali Khan exercises actual, undisputed sovereignty.

Beyond that limit, and especially with regard to Badakshan and Wakhan, it has been impossible to find any traces of such a sovereignty; on the contrary, all our information upon the subject goes to prove that these districts should be regarded as independent.

In the communication from Her Britannic Majesty's government, which was made to us in November last, it is seen that according to the testimony of Major Montgomery the Ameer of Cabul has "considerable authority" in Badakshan, and that the Afghans have "assisted Mahmood Shah to upset the emir or chief of this country, Jehendar Shah." But these facts themselves seem to point rather to the real independence of Badakshan than to its absolute subjection to the Ameer of Cabul. The information collected by M. Struve, and contained in his memorandum, supports this conclusion. Mention is made, it is true, of interference by the Afghan ameer in the internal disputes of Badakshan, and of attempts on his part to get his assistance paid for by a kind of tribute, but nowhere are the signs to be found which in Asia accompany the exercise of the rights of sovereignty; for instance, the presence in the country of Afghan officers and of officials to collect taxes.

The chiefs of Badakshan looked upon themselves, and were looked upon by their neighbors, as independent chiefs.

It follows that, from these facts, at the most, it may be granted that the Ameer of Cabul has on various occasions attempted to bring Badakshan under his dominion; that he has several times profited by internal discord to exercise over the country considerable control, based on his position as a neighbor and the superiority of his forces, but that it is impossible to deduce from them the existence of a real and uncontested sovereign power.

As to Wakhan, that country seems to have remained up to the present moment even more outside the circle of the direct action of the chiefs of Afghanistan.

3. We have next to inquire whether or not in this state of things, and in view of our common object, that is, the establishment in those regions of a permanent peace guaranteed by both governments it is well to recognize the rights claimed by the Ameer of Cabul over Badakshan and Wakhan, and to comprise these two countries within the territorial limits of Afghanistan. Such is not the opinion of M. l'Aide-de-Camp Général Kaufmann, and the imperial cabinet arrives at the same conclusions.

In the present state of things there is no dispute between Badakshan and her neighbors. Bokhara puts forward no claim to that country. The two states are, besides, too weak, too absorbed in their own affairs, to wish to quarrel. England and Russia would consequently have nothing to do but to maintain this state of peace, as well between these khanates as between Afghanistan and Badakshan; and this task would not seem beyond their power. Far otherwise would it be the day that the Ameer of Cabul should extend his authority over Badakshan and Wakhan. He would find himself immediately in contact with Kashgar, Khokand, and Bokhara, from which he is now separated by those two countries. From that moment it would be far more difficult to avoid contests due either to his ambition and consciousness of power, or to the jealousy of his neighbors. This would give a most precarious basis to the peace it is sought to establish in those countries, and compromise the two governments who would be called upon to guarantee it. This arrangement would consequently seem to us to go directly counter to the object which they have in common. It would appear to us much more in keeping with the object to allow the present state of things to continue. Badakshan and Wakhan would thus form a barrier interposed between the northern and southern states of Central Asia, and this barrier, strengthened by the combined action which England and Russia are able to bring to bear upon such of those states as are accessible to their influence, would effectually prevent any dangerous contact, and would, in our opinion, secure, as far as anything could do so, the peace of those countries.

4. As for the boundaries to be recognized as those of Afghanistan on the northwest, starting from Khodja Saleh, the information we have received equally throws doubts upon the *de facto* possession by the Ameer of Cabul of the towns of Aktchi, Leripool, Meimané, Chibirgan, and Andkhai, which it is a question of comprising within the acknowledged boundaries of Afghanistan.

These districts, however, being divided from Bokhara by deserts, would not, if annexed to the Afghan territory, offer the same dangers of contact that we have pointed out on the northeast, and their annexation would not consequently be open to the same objections. If the government of Her Britannic Majesty adheres to its opinion of the expediency of comprising these places within the limit of the Afghan territory, we will not insist upon the principle from which we first started, namely, that no district

should be acknowledged as part of Afghanistan but such as had been under the rule of Dost Mahammed Khan, and were at this moment in actual subjection to Shere Ali Khan. In deference to the wish of the government of Her Britannic Majesty, the imperial cabinet would be disposed, as far as this portion of the boundary is concerned, to accept the line laid down in Lord Granville's dispatch. Such, M. le Comte, are briefly the conclusions which we think the materials in our hands justify us in forming.

Be so good as to lay them before the chief secretary of state of Her Britannic Majesty. Our intention in communicating them to his excellency is not only to fulfill our promise. We believe that, in attempting the rational solution of a question which interests the two governments equally, we are best carrying out the purposes which have animated both ever since their first friendly interchange of ideas.

Receive, &c.,

GORTCHACOW.

C.

General Kaufmann to Prince Gortchacow.

[Inclosure 1 in No. 2.—Translated from the Russian.]

ST. PETERSBURG, *November 29, 1872.*

I have the honor to submit to your highness herewith a memorandum on the question of the northern frontier of Afghanistan. This memorandum has been compiled on the basis of such data and materials as I have succeeded in collecting in the course of the last two years on the subject of the state of affairs on the frontier of Afghanistan and Bokhara and the independent states on the upper course of the Amou Daria.

I confess that these data are far from being complete.

Personal investigation and observation, exercised on the very spot, are, in Central Asia, the only means of obtaining enlightenment on any question whatever, political or geographical. I have not, as yet, had recourse to these means. To have sent a Russian official into these countries, even on the pretext of a scientific mission, might have created a panic in Afghanistan, and would have awakened suspicions and apprehensions on the part of the government of India. It was my duty to avoid anything that might in any way have disturbed the satisfactory state of our relations as established by the friendly and sincere exchange of ideas which has taken place between the imperial government and that of Her Britannic Majesty.

I have already had the honor of communicating to your highness my opinion as to one of the causes of the excited state of public feeling existing in the khanates of Central Asia bordering on Russia. That is, that all our neighbors, and particularly the Afghans, are filled with the conviction that there exists between Russia and England an enmity which, sooner or later, will lead us into a conflict with the English in Asia.

In conformity with the intentions and views of the minister for foreign affairs, I have applied myself to dispel this bugbear of an impending conflict between the two great powers. In my relations with Khokand or Bokhara, and, above all, in my letters to Shere Ali Khan, I have always spoken of the similarity of views and of the friendship existing between ourselves and England; and I have applied myself to the task of demonstrating that these two powers, Russia as well as England, are equally solicitous for the tranquillity of the countries and peoples which lie within the radius of their influence and protection.

It is this reason which, up to the present time, has determined me not to send officers into those parts with the object of obtaining information respecting the question put to me by the imperial government.

This state of things is quite as advantageous for us as for England. But it is liable to change should once the possessions of Shere Ali Khan be guaranteed to him within the boundaries proposed at the present moment by Lord Granville in his dispatch to Lord A. Loftus of the 17th of October last. Such a guarantee would give him a considerable prestige, and he would immediately attempt to seize, *de facto*, the territories conceded to him. First of all he would turn his attention toward Badakshan and Wakhan as the easiest and most attainable booty. By the acquisition of these two territories he would prolong his line of contact with Bokhara, and would find himself side by side with Karatequina, whence Khokand is within easy reach. Finally, his northwestern boundary would touch the possessions of Yakoub Bek. Here is a road which would lead him straight into collision with Russia.

If the English government is really animated by the same wish as ourselves to maintain internal peace and tranquillity in the khanates which separate us from the British possessions in India; if England will give credit to our sincere protestations that

we are not dreaming of any hostile enterprise whatever against her Indian possessions, common sense ought to suggest to her the necessity of recognizing the independence of Badakshan and Wakhan equally in the interests of the Ameer of Cabul and of Bokhara.

I have, &c.,

KAUFMANN.

D.

[Inclosure in No. 2.—Translated from the Russian.]

Memorandum of Mr. Struve for General Kaufmann.

In the strict sense of the word, the possessions of the Ameer Shere Ali Khan only extend eastward as far as the meridian of the point of junction of the river Kouktcha with the Amou-Daria.

This line separates Badakshan and Wakhan from the province of Kunduz, which incontestably forms part of the dominion of Shere Ali Khan. It was annexed to Afghanistan about twenty years ago, by Mahammed Afzul Khan, son of Dost Mahammed, who was at that time governor of Balkh. Afzul Khan, as we learn from an English communication, made a fruitless attempt to seize Badakshan, the consequence of which, however, was that the Meer of Badakshan, in order to secure the safety of his dominions, engaged to pay to Dost Mahammed Khan an annual tribute of two rupees for every house, and to deliver up to him the mines of rubies and lapis-lazuli situated in his territory.

This engagement, however, was not fulfilled. The death of Dost Mahammed Khan suggested to the chiefs of Badakshan, who little wished to become subservient to Cabul, the idea of seeking the protection of Bokhara; but the Ameer Seid Mouzaffer totally declined to interfere in the affairs of Badakshan, not because he looked upon this country as a dependency of Afghanistan, but because at that time he was anxiously watching the progress of our arms in Central Asia, and was preparing to march against Kokand.

Djandar Shah, who was then ruler of Badakshan, was an entirely independent sovereign, and recognized as such by all his neighbors. He had entered into friendly relations with Mahammed Afzul Khan and his son, Abdourrahman Khan, to whom he paid no tribute. When Shere Ali Khan, having defeated Abdourrahman, had occupied Cabul and Balkh, and made himself master of all Afghanistan, he sent an embassy to Djandar Shah, calling upon him to fulfill the engagements which he had formerly contracted. Djandar Shah answered by a refusal. Thereupon Mahammed Shah, his nephew, supported by the Afghan troops, overthrew his uncle, and made himself master of Faizabad, the capital of Badakshan, while his younger brother, Mizrab Shah, seized Tehaiab, the chief town of the province of Roustakh. The two brothers now pay to Shere Ali Khan, in recognition of the co-operation which he granted them, an annual tribute of 15,000 rupees, (9,000 roubles.) With the exception, however, of a very small number of Afghan adventurers, one meets in Badakshan with neither officials nor troops of the Ameer of Cabul, and his people themselves detest the Afghans.

This intelligence, furnished by Abdourrahman Khan, and gathered partly from the lips of envoys of the Serdar of Balkh who came to Tashkend, is confirmed by the statement of Alif Bek, ex-governor of Sarikoul, (a province of Kashgar bordering on Wakhan,) who presented himself at Tashkend in the month of August of the present year. He added that Djandar Shah, the legitimate ruler of Badakshan, who, first of all, fled to Bokhara, had afterward returned by Samarkand and Kokand to Chougnan.

Such a state of things existing in Badakshan clearly shows that Shere Ali Khan could have no pretension to the possession of Badakshan as an inheritance bequeathed to him by Dost Mahammed Khan, and that his authority is not yet established in Badakshan. Mahammed Shah and Mizrab Shah, the actual rulers of Badakshan, do not consider themselves as beks of the Ameer of Cabul, and if they pay him tributes, it is only in the interests of their own security, and in order to shelter themselves from the sudden attacks of the brigands of Kunduz. Moreover, they have still to fear their uncle, Djandar Shah. There is nothing to favor the belief that the state of affairs in Badakshan is likely to change soon in favor of Shere Ali Khan, and it is certain that the present state of things in that country is in accordance, or nearly so, with the objects we have in view in Central Asia in common, and after a previous and voluntary understanding with England. Nor does anything point to the possibility of a collision between Afghanistan and Bokhara on the side of Badakshan; the Ameer Seid Mouzaffa has put forward no pretension to the possession of that country. In the same way, Shere Ali Khan, who with difficulty keeps up a show of authority at Badakshan, is

not in a position at this moment to exercise any influence over Kouliab and Hissar, the towns of Bokhara which lie nearest to Badakshan. The official recognition of Russia and England of the rights of Shere Ali Khan over this country would at once lead that sovereign to make every effort to establish himself at Taizabad and in the district of Roustakh, and should he once succeed, a collision between Bokhara and Afghanistan would become inevitable. In support of this view, it will suffice to state that the former bek of Hissar, who in 1870 took refuge in Afghanistan, after his revolt against the Ameer Seid Mouzaffar in 1869, has already made attempts to recover his province, with the assistance of the Afghans, to whom he promised the entire subjection to the Ameer of Cabul of the whole of the province of Hissar and Kouliab. That this plan has not been carried out, must be attributed to the fact that the authority of Shere Ali Khan in Badakshan was null, and that the Ameer had no means of aggression at his disposal in that state.

To the east of Badakshan, in the upper basin of the Amou-Daria, lies a country little known, named Wakhan. This country, sometimes called Dariapendz, (the Five Rivers,) on account of the five principal tributaries which give rise to the Amou-Daria, to the north borders on the Pamir Steppe, which separates it from Karategnine; to the east it marches with Sarikoul, which belongs to the states under Yakoub Bek; to the south it is separated from Tchitrar (a country completely independent of Cabul) by the mountains of Nouk San, the eastern prolongation of the Hindoo Koosh. Wakhan is administered by a chief of its own, but the poverty of its inhabitants and the barrenness of the soil of mountainous district have brought it into dependence upon Badakshan, the beks of which do not, however, meddle with its domestic affairs. Once a year the chief of Wakhan sends a certain sum of money to the beks of Badakshan, but there are no direct relations between this country and Afghanistan.

A road passes through Badakshan and Wakhan, connecting Kunduz with Sarikoul, Yarkend, and Kashgar. According to certain information in our possession, this road is longer than the direct road from Peshawur to Yarkend taken by Mr. Shaw.

As to the Amou-Daria, this river serves as a boundary line between Afghanistan and Bokhara for a distance of about three hundred versts, from the confluence of the Koutkcha on the east up to the point where both banks belong to Bokhara, and especially as far as the pass of Tchouckha-Gouzar, opposite the Bokharan village Khodja-Laleh, which is on the right bank of the river.

To sum up as far as regards the northwest boundary of Afghanistan, although there are doubts as to the actual possession by the Ameer of Cabul of the towns of Aktchou, Seripool, Maimané, Chibirgan, and Andkhai, lying to the west of Balkh, it may be taken into consideration that all this region is isolated from the states of Bokhara by an almost impassable desert, and, in part, even by the sands; and that, consequently, on that side there would be less fear of any immediate collision between Afghanistan and Bokhara.

E.

Earl Granville to Lord A. Loftus.

No. 3.]

FOREIGN OFFICE, *January 8, 1873.*

MY LORD: Having received information from your excellency and from Count Brunnow that Count Schouvaloff, a statesman enjoying the confidence of the Emperor of Russia, had left St. Petersburg for London at the desire of His Imperial Majesty, I had the pleasure of receiving his excellency on the 8th instant.

He confirmed the fact that it was by the Emperor's desire that he had sought a personal interview with me. It had caused great surprise to His Imperial Majesty to learn from various sources that a certain amount of excitement and susceptibility had been caused in the public mind of this country on account of questions connected with Central Asia.

The Emperor knew of no questions in Central Asia which could affect the good understanding between the two countries. It was true, that no agreement has been come to as to some of the details of the arrangement concluded by Lord Clarendon and Prince Gortchacow, on the basis of Mr. Forsyth's recommendations as to the boundaries of Afghanistan; but the question ought not to be a cause to ruffle the good relations between the two countries. His Imperial Majesty had agreed to almost everything that we had asked. There remained only the point regarding the provinces of Badakshan and Wakhan.

There might be arguments used respectively by the departments of each government; but the Emperor was of the opinion that such a question should not be a cause of difference between the countries, and His Imperial Majesty was determined that it should not be so. He was the more inclined to carry out this determination in consequence of His Majesty's belief in the conciliatory policy of Her Majesty's government.

Count Schouvaloff added, on his own part, that he had every reason to believe, if it were desired by Her Majesty's government, the agreement might be arrived at at a very early period.

With regard to the expedition to Khiva it was true that it was decided upon for next spring. To give an idea of its character it was sufficient to say that it would consist of four and a half battalions. Its object was to punish acts of brigandage, to recover fifty Russian prisoners, and to teach the Khan that such conduct on his part could not be continued with the impunity in which the moderation of Russia had led him to believe. Not only was it far from the intention of the Emperor to take possession of Khiva, but positive orders had been prepared to prevent it, and directions given that the conditions imposed should be such as could not, in any way, lead to a prolonged occupancy of Khiva.

Count Schouvaloff repeated the surprise which the Emperor, entertaining such sentiments, felt at the uneasiness which it was said existed in England on the subject; and he gave me most decided assurance that I might give positive assurances to Parliament on this matter.

With regard to the uneasiness which might exist in England on the subject of Central Asia, I could not deny the fact to Count Schouvaloff; the people of this country were decidedly in favor of peace, but a great jealousy existed as to anything which really affected our honor and interest; that they were particularly alive to anything affecting India; that the progress of Russia in Asia had been considerable, and sometimes, as it would appear, like England in India, and France in Algeria, more so than was desired by the central governments; that the Clarendon and Gortchacow arrangement, apparently agreeable to both governments, had met with great delay as to its final settlement; that it was with the object of coming to a settlement, satisfactory to both countries, and in a friendly and conciliatory spirit, that I had addressed to your excellency the dispatch of the 17th of October.

The only point of difference which now remained, as Count Schouvaloff had pointed out, concerned Badakshan and Wakhan. In our opinion, historical facts proved that these countries were under the domination of the sovereign of Cabul, and we have acknowledged as much in public documents; that, with regard to the expedition to Khiva, Count Schouvaloff was aware that Lord Northbrook had given the strongest advice to the Khan to comply with the reasonable demands of the Emperor, and if the expedition were undertaken and were carried out with the object and within the limits described by Count Schouvaloff, it would meet with no remonstrance from Her Majesty's government, but it would undoubtedly excite public attention, and make the settlement of the boundary of Afghanistan more important for the object which both governments had in view, viz, peace in Central Asia, and good relations between the two countries.

As to coming to a decision at an early date, it appeared to me desirable, inasmuch as it would bear a different aspect if arrived at in the spirit with which both governments were actuated, and not complicated by possible discussions raised in the British Parliament.

I concluded by telling Count Schouvaloff that I knew the confidence which was placed in him by the Emperor, and that I felt sure that my colleagues would agree with me in appreciating his visit to England as a gratifying proof of the eminently conciliatory and friendly spirit with which the Emperor desired to settle without delay the question at issue.

I am, &c.,

GRANVILLE.

F.

Earl Granville to Lord A. Loftus.

No. 4.]

FOREIGN OFFICE, *January 24, 1873.*

MY LORD: Her Majesty's government have attentively considered the statements and arguments contained in Prince Gortchacow's dispatch of the 17th December, and the papers that accompanied it, which were communicated to me by the Russian ambassador on the 11th December, and to your excellency by Prince Gortchacow on the 29th of that month.

Her Majesty's government gladly recognize in the frank and friendly terms of that dispatch the same spirit of friendliness as that in which, by my dispatch of the 17th of October, I desired to convey through your excellency to the Russian government the views of that of Her Majesty in regard of the line of boundary claimed by Shere Ali, the ruler of Cabul, for his possessions of Afghanistan.

Her Majesty's government see with much satisfaction that, as regards the principal part of that line, the imperial government is willing to acquiesce in the claim of Shere Ali, and they rely on the friendly feelings of the Emperor when they lay before him, as I now instruct your excellency to do, a renewed statement of the grounds on which they consider that Shere Ali's claim to the remainder of the line of boundary, referred to in my dispatch of the 17th of October, to be well founded.

The objections stated in Prince Gortchacow's dispatch apply to that part of Shere Ali's claims which would comprise the province of Badakshan, with its dependent district of Wakhan, within the Afghan state. The imperial government contend that the province of Badakshan, with its dependency, not having been formally incorporated into the territories of Shere Ali, is not legitimately any portion of the Afghan state.

To this Her Majesty's government reply that the Ameer of Cabul, having attained by conquest the sovereignty over Badakshan, and having received in the most formal manner the submission of the chiefs and people of that province, had the right to impose upon it such a form of government as he might think best adapted to the position of affairs at that time. In the exercise of this right he appointed a local governor, and he consented, experimentally, to receive a fixed portion of the revenues of the country, instead of taking upon himself its general financial and other administration. But the Ameer expressly reserved to himself the right of reconsidering this arrangement, which was, in the first instance, made only for one year, of at any time subjecting Badakshan to the direct government of Cabul, and of amalgamating the revenues thereof with the general revenue of the Afghan state. Her Majesty's government cannot perceive anything in the circumstances calculated to weaken the claims of Shere Ali to the absolute sovereignty of Badakshan. The conquest and submission of the province was complete; and it cannot reasonably be urged that any experimental form of administration which the Ameer, with the acknowledged right of sovereignty, might think fit to impose on Badakshan, could possibly disconnect the province from the general territories south of the Oxus, the sovereignty of which the Russian government has, without hesitation, recognized to be vested in the Ameer of Cabul.

Her Majesty's government have not failed to notice in portions of the statements of the Russian government, to which I am now replying, that its objection to admitting Badakshan and Wakhan to be under the sovereignty of Shere Ali, is rested in part on an expressed apprehension lest their incorporation with the remainder of Afghanistan should tend to disturb the peace of Central Asia, and specifically should operate as an encouragement to the Ameer to extend his possessions at the expense of the neighboring countries. I alluded, in my dispatch of the 17th of October, to the success which had attended the recommendations made to the Ameer by the Indian government, to adopt the policy which had produced the most beneficial results, in the establishment of peace in countries where it had long been unknown; and Her Majesty's government see no reason to suppose that similar results would not follow on the like recommendations. Her Majesty's government will not fail to impress upon the Ameer, in the strongest terms, the advantages which are given to him in the recognition by Great Britain and Russia of the boundaries which he claims, and of the consequent obligation on him to abstain from any aggression on his part, and Her Majesty's government will continue to exercise their influence in the same direction. Her Majesty's government cannot, however, but feel that if Badakshan and Wakhan, which they consider the Ameer justly to deem to be part of his territories, be assumed by Russia or England, or by one or either of them, to be wholly independent of his authority, the Ameer might be tempted to assert his claims by arms; that perhaps in that case Bokhara might seek an opportunity of acquiring districts too weak of themselves to resist the Afghan state; and that thus the peace of Central Asia would be disturbed, and occasion given for questions between Great Britain and Russia which it is on every account so desirable to avoid, and which Her Majesty's government feel sure would be as distasteful to the imperial government as to themselves. Her Majesty's government therefore hope that the imperial government, weighing these considerations dispassionately, will concur in the recognition which they have made of Shere Ali's rights, as stated in my dispatch of October, and by so doing put an end to the wild speculations so calculated to distract the minds of Asiatic races, that there is some marked disagreement between England and Russia, on which they may build hopes of carrying out their border feuds, for purposes of self aggrandizement.

Her Majesty's government congratulate themselves on the prospect of a definite settlement, as between the two governments, of the question of the boundaries of Afghanistan, the details of which have been so long in discussion.

Your excellency will read and give a copy of this dispatch to Prince Gortchacow.

I am, &c.,

GRANVILLE.

G.

Prince Gortchacow to Count Brunnow.

[Communicated to Earl Granville by Count Brunnow February 5.]

No. 5.]

ST. PETERSBURG, *January 1st, 1873.*

M. LE COMTE: Lord Augustus Loftus has communicated to me the reply of Her Britannic Majesty's principal secretary of state to our dispatch on Central Asia of the 19th of December. I inclose a copy of this document. We see with satisfaction that the English cabinet continues to pursue in those parts the same object as ourselves—that of insuring to them peace and, as far as possible, tranquillity.

The divergence which existed in our views was with regard to the frontiers assigned to the dominions of the Shere Ali. The English cabinet includes within them Badakshan and Wakhan, which, according to our views, enjoyed a certain independence. Considering the difficulty experienced in establishing the facts in all their details in those distant parts; considering the greater facilities which the British government possesses for collecting precise data; and, above all, considering our wish not to give to this question of detail greater importance than is due to it, we do not refuse to accept the line of boundary laid down by England.

We are the more inclined to this act of courtesy as the English government engages to use all its influence with Shere Ali in order to induce him to maintain a peaceful attitude, as well as to insist on his giving up all measures of aggression or further conquest. This influence is indisputable. It is based not only on the material and moral ascendancy of England, but also on the subsidies for which Shere Ali is indebted to her. Such being the case, we see in this assurance a real guaranty for the maintenance of peace.

Your excellency will have the goodness to make this declaration to Her Britannic Majesty's principal secretary of state, and to give him a copy of this dispatch.

We are convinced that Lord Granville will perceive in it a fresh proof of the value which our august master attaches to the maintenance and consolidation of the most friendly relations with the government of Her Majesty Queen Victoria.

Receive, &c.,

GORTCHACOW.

No. 336.

Mr. Schuyler to Mr. Fish.

No. 68.]

LEGATION OF THE UNITED STATES,
St. Petersburg, March 18, 1873. (Received April 9.)

SIR: I have the honor to inform you that Governor Orr arrived here on the evening of March 15. Yesterday, by appointment, I called with him on Prince Gortchacow, who received us very cordially, and informed Governor Orr that he had already spoken to the Emperor, who would receive him the next day. As the interval between arrival and audience is often a week or ten days, this dispatch was, I think, intended as a special compliment to the representative of the United States.

Governor Orr accordingly had an audience from the Emperor to-day, and, with the delivery to him of the archives of the legation, my duties as chargé d'affaires cease. I trust I have been able to perform them to the satisfaction of the Government.

I have, &c.,

EUGENE SCHUYLER.

No. 337.

Mr. Orr to Mr. Fish.

No. 1.]

LEGATION OF THE UNITED STATES,
St. Petersburg, March 18, 1873. (Received April 9.)

SIR: I respectfully report that I arrived at St. Petersburg on Saturday evening, March 15. On Sunday Mr. Schuyler addressed a note to Prince Gortchacow, informing him of my arrival, and inquiring when I could have an interview with him to arrange the time for the presentation of my credentials to the Emperor. The prince replied that afternoon, stating that he would grant the interview at half past twelve o'clock on Monday.

I called at that hour, was introduced by Mr. Schuyler, and had a short but agreeable interview with the prince. He referred to the Catacazy affair, and expressed regret at its occurrence. He said that Catacazy was a shrewd man, of good ability, and a fine writer, who had been with him four or five years in the foreign office, who he thought would be of great service in America, but that he turned out a meddlesome fellow, greatly lacking in judgment. He was therefore no longer in the service of the government.

The prince inquired how Baron d'Offenberg had been received by our Government, and when I said to him that his reception was most hearty and cordial, and that his general bearing had been so discreet that he had made many friends outside of official circles, as well as within them, he expressed the highest satisfaction.

The prince informed me that the Emperor would grant me an audience to present my credentials at half past one o'clock to-day, (Tuesday.) I accordingly went to the palace at that hour and was received by His Majesty the Emperor Alexander. On presenting my credentials I delivered a very brief address to His Majesty, (of which I inclose herewith a copy, marked A.) The Emperor, in reply, heartily reciprocated the sentiments of kind feeling, good fellowship, and enduring peace between the two governments. The Emperor referred to the Catacazy affair as an unpleasant incident, which had happily passed away, and expressed his gratification on being assured that the reception of Baron d'Offenberg by our Government had been cordial, and that his general conduct had so warmly commended him in official and unofficial circles. The Emperor then adverted to the visit of the Grand Duke Alexis, his son, to America, and said that his sensibilities were deeply touched by the hospitable and distinguished reception given him by the American people, and that these demonstrations were accepted by him, not so much as a personal tribute to the Grand Duke, as a manifestation of friendship and respect to the Russian government, as their oldest and most steadfast friend in Europe. The interview was not protracted, but all of its incidents were cordial and pleasant.

From the remarks both of the Emperor and of Prince Gortchacow, I am of the opinion that the Catacazy affair has left no unpleasant feelings behind it.

I have, &c.,

JAMES L. ORR.

A.

Copy of address delivered by Governor Orr to His Majesty the Emperor.

YOUR IMPERIAL MAJESTY: I respectfully ask leave to present to you my credentials as envoy extraordinary and minister plenipotentiary from the Government of the

United States to the Government of Your Imperial Majesty. It is my pleasing duty in presenting them to express to Your Majesty the continued friendship cherished by President Grant and his administration for Your Majesty and for the great empire of Russia.

It is his earnest desire to cultivate the harmony and good correspondence so happily existing between the two governments.

It is nearly one hundred years since these relations of cordial friendship were inaugurated, and no reason can exist why they should not be perpetuated indefinitely in the future.

While residing near your court Your Majesty may be assured of my ready co-operation in fostering the ancient good-will and kind relations between the two governments. Permit me to express my sincere wishes for the continued good health of Your Majesty and for the growing prosperity of your empire.

No. 338.

Mr. Orr to Mr. Fish.

No. 2.]

LEGATION OF THE UNITED STATES,
St. Petersburg, March 18, 1873. (Received April 9.)

SIR: At my interview on Monday last with Prince Gortchacow, after saying that he had no doubt our intercourse would be such as to maintain pleasant relations between the two countries in future, Prince Gortchacow then referred to Mr. Schuyler, and said that his relations to the government had always been most cordial and satisfactory, and the government had been much pleased with the manner he had performed his duties. The prince added that he would be glad if these words were repeated to our Government.

I felt it due to Mr. Schuyler, as he has been acting here for several months as chargé d'affaires, with all the responsibilities of the mission upon him, that I should communicate in this dispatch the foregoing appreciation of his services by the minister of foreign affairs here.

I have, &c.,

JAMES L. ORR.

No. 339.

Mr. Orr to Mr. Fish.

No. 5.]

LEGATION OF THE UNITED STATES,
St. Petersburg, May 2, 1873. (Received May 21.)

SIR: I have the honor to inform you that the Japanese embassy, of which the Hon. Iwakura was chief, arrived here on the 1st of April. They were received by officials, and great ceremony and cordiality was shown them during their stay. The facts, as far as can be definitely ascertained, are as follows: The chief object of the mission was to enter into more close diplomatic relations with the Russian government, and the question concerning the Saghaline Island was raised. Part of this island has for a long time belonged to Russia, has been under her control, and is at present one of her penal colonies. She is now endeavoring to get complete mastery of it; and, it is said, to accomplish this, proposed to cede part of the Coreil Islands to the empire of Japan. Nothing, however, has been decided as yet. Count Struve is the new Russian minister to Japan, and will take charge in June.

I have, &c.,

JAMES L. ORR.

XXVIII.—SALVADOR.

No. 340.

Mr. Biddle to Mr. Fish.

No. 87.]

LEGATION OF THE UNITED STATES

San Salvador, November 11, 1872. (Rec'd Dec. 7.)

SIR: I have the honor to transmit to you herewith a copy and translation of an "exposition" addressed to the National Constituent Congress by the ministry of the government of Salvador, reviewing the policy of the administration, and submitting for its sanction the late war-measures of the President, at variance with the letter of the constitution of 1871.

I also append the resolution of the convention approving the entire course of President Gonzalez, as stated in the aforesaid memorial.

A project has been presented to the nation from the convention for the formation of a bank, of which I annex a copy and translation. The late revolutions and foreign wars have embarrassed the finances of the state and commercial prosperity, and the creation of a bank separate from the government, with securities from abroad, for hypothecations, loans, discounts, and circulation, is thus suggested as a safe basis for monetary transactions. I also annex a copy of a decree of the President of the republic, consonantly to the above resolution of the convention, dated the 4th instant, in which he prescribes the establishment of a bank as aforesaid, with stipulations as authorized by the Congress. The fourteenth article thereof establishes The Bank for Hypothecation of Real Estate of Salvador so soon as the subscription for a moiety of its stock is completed, and agencies are to be established in all the departments of the republic, to be organized according to the regulations.

Also, an agency is to be at once placed in London, to represent the bank in its relations and operations with foreign stockholders and with other persons or establishments. The office to be performed by three employés, one to be named by the foreign shareholders, another by the national shareholders, and the last by the government. If the directory of the bank shall deem it convenient hereafter to establish other agencies in other foreign places, it may do so, the government approving, and with the same terms as for that at London.

I have, &c.,

THOMAS BIDDLE.

[Inclosure 1.—Translation.]

CONSTITUENT CONGRESS.

Exposition of the Salvadorean cabinet to the National Constituent Congress, submitting for its approval the measures taken in consequence of the extraordinary situation in which the republic was placed.

REPRESENTATIVES: By the disposition of the Marshal President of the republic and consonantly to the terms of your convocation, the undersigned ministers of state have the honor to relate and to submit to you the policy and measures which the government has been obliged to dictate, owing to the exceptional circumstances through which the nation has passed, whose great interests it was impossible to preserve without displaying the activity which the intrigues and machinations of the disaffected rendered necessary.

Notorious are the motives, as flimsy as hurtful to Salvador, which served as a pretext to the ex-President of Honduras, Don José Maria Medina, to openly take a hostile

attitude against this republic, to close official relations, and to declare war, issuing the unjustifiable decree dated 25th of March of this year.

With this emergency, the executive authority was obliged to use the foremost of its attributes "to maintain inviolable the sovereignty and independence of the republic and the integrity of its territory, and to conserve the peace and domestic tranquillity."

In every light the said decree of the Honduran government amounted to a formal declaration of war, unless it were that its armies had not at once invaded Salvador.

The unlooked-for rupture of every kind of official and private relations between both countries, the unjustifiable insults and injuries, as grave as gratuitous, embodied in that decree, and, lastly, the clear and determined words with which the republic of Honduras declared itself in a state of war with Salvador, are facts which demonstrate, in an irrefutable manner, the truth of the proposition which we have enunciated.

With these antecedents, and in the certainty that the Honduran government was accumulating every kind of warlike supply to commence hostilities at the opportune time, and also seeing that the reactionaries redoubled their efforts to produce discord in the interior, it appears evident that the government had drawn the line of conduct proper to preserve harmless the national honor and the republic from the threatened evils, and at the least sacrifice: to accept war, to prosecute it with activity, and to select the enemy's soil for the campaign—conditions which gave us the advantage and averted from our people the evils consequent to occupancy by a foreign army and the operations of war.

The government, thus convinced, could not do less than accept the situation and do its best for a favorable result to the unwelcome war. (See Decrees Nos. 1 and 2.)

We have thus detailed the circumstances preceding the campaign in Honduras to direct your attention to the fact of the invasion of that republic without the formal declaration of war by the legislative authority, as is its prerogative, according to section 14 of the 36th article of the constitution.

It has been declared that in this case the executive usurped one of the provinces of the legislature; but, upon consideration, it appears not to be so, for it is shown that it was the government of Honduras which declared war and that ours only accepted it, selecting with prudence and activity the time and the theater for the operations of the campaign. Consequent to this was the procurement by the government of funds with which to support the extraordinary expenses of the war, when the ordinary revenue became insufficient therefor. This aroused the patriotism of the Salvadoreans, and these satisfactorily aided the government with their means. We see, therefore, that the assemblage of the legislature, under the circumstances, was unnecessary, not having to declare war, nor the manner of its prosecution.

At the same time it was absolutely necessary to make some arrests temporarily, and to banish some individuals who had aided, at every peril, the Honduran aggressor, defeating the efforts of the government and creating every sort of difficulty in the interior.

The Marshal President, desiring to be prominent in the maintenance of the national dignity, the glory and the luster of the Salvadorean arms, resolved to direct the war in person, and therefore placed himself at the front of the army, delivering the executive power to the vice-president. The campaign opened in May. You well know, representatives, that unbroken series of triumphs, so glorious to our standard, extending the sway of liberal principles, and assuring to the nation a long era of peace and tranquillity, elements so necessary to its happiness and progress.

The aggressor being reduced to the last extremity, and deeming the war already ended, the government of Salvador, firm in its determination not to prolong the abnormal condition, if the public good, did not exact it, revoked the decrees of the 5th and 25th of April, issuing that of the 19th of June, as by No. 3.

But the greater part of the Salvadorean forces having returned triumphant, there remaining in Honduras only a small number to support the provisional government in the re-establishment of domestic order, and in its labor of re-organization General Don José Maria Medina appeared anew in Santa Barbara with a force of six or eight hundred men and munitions of war, which some disaffected emigrants from Guatemala had sent to him from northern ports. At the same time party passion burst forth in the interior. Excited by the course of events, conspiracies were formed to embarrass the action of the government, and a riot broke out in Cojutopeque, illustrating the ignorance and fanaticism of the Indians.

The abuse of the press on the part of the enemies to order had reached such a point that it was only used to enervate the government measures and to injure the authorities.

Certainly, at that time, affairs were critical. Abroad, war blazed afresh; at home, anarchy, with its horrors, threatened.

Then the government, seeing the impossibility to assemble the chambers of the legislature, and not finding in the constitution sufficient means to confront so grave a situation, firm in the belief that the principle to which all others are subordinate is the conservation and safety of the state, assumed the course which circumstances de-

manded, and the pressing necessity obliged and promulgated the decree of the 17th of July, marked No. 4.

Consonantly to this disposition, and to attain the proposed end, some persons of every estate and condition who had openly overturned order were expelled from the country. Also some new troops were sent to Honduras, which, efficiently aided by our neighbor and sister, the republic of Guatemala, continued uninterruptedly the splendid triumphs of the first campaign, even to completely destroy the last remnants of the party inimical to Salvador in that republic.

The exercise of the rights and the fulfillment of the duties anterior and higher to the positive laws recognized by the constitution, the imperative necessity to save the republic from the frightful consequences which would have attended victory on the part of General Medina, and the beneficent and splendid results which have been obtained, make clear the justice and propriety of the course pursued by the government and the good faith which has presided over all its actions.

The consolidation of order, the guarantee of peace and public tranquillity, the honor and glory of the national flag, and the spread of liberal principles—these are, representatives, the grand results obtained at the cost of very small sacrifices.

One of the advantages derived from the overthrow of the government of General Medina was the agreement signed at Gratias by the citizen Marshal President, in his quality as general-in-chief of the army, and the provisional government of Honduras, as by Schedule 5.

In this document you will find expressed the just obligations which the new government has recognized in favor of Salvador, which partly compensate for the sacrifices of the war.

Your happy convening, which has for its principal objects to remedy the defects and omissions of the constitution, shown principally by popular demonstrations, has impelled the executive to abrogate the decree of the 17th of July, to which end he has issued that of the 24th ultimo, as by No. 6.

Decrees are also submitted as to the press, and also the creation of townships in the district of Cojutopeque.

The supreme government, trusting in your patriotism and intelligence, and with an approving conscience, awaits your judgment upon all its dispositions and measures which have been specified, and doubts not but that you will give to it your approval.

The proclamations of the President, and many other papers published by the official press, clearly state the true causes of the conflict provoked by Honduras, and of all the intrigues and machinations in the interior, which favored the designs of the Honduran leader; but, if possibly you may deem more precise data necessary for resolution upon the points submitted, we will present all others which you may request.

San Salvador, October 4, 1872.

The Minister of Foreign Relations,

GREGORIO ARBIZU.

The Minister of the Treasury and War,

J. J. SAMAYOA.

The Minister of Public Instruction and Government,

FABIO CASTILLO.

[Inclosure 2.—Translation.]

GENERAL MINISTRY.

The President of the Republic of Salvador to its inhabitants:

Know ye that the National Constituent Congress has decreed the following:

The National Constituent Congress of the republic of Salvador, considering that it is a duty of the executive to maintain inviolate the sovereignty and independence of the republic; and that, complying with this sacred duty, he has dictated proper measures, and acted conformably to the exaction of the abnormal circumstances in which the country was placed by the unjustifiable war, which, under date of the 25th day of March last, was declared by the government of Honduras, presided over at that time by the General Don José Maria Medina;

That the executive authority in issuing the decree of the 17th of July last, and in all the consequential procedures, has had for his only object to preserve the peace, and the interior tranquillity threatened, not only by the seditions in Cojutopeque, but also by the designs of some discontented with the actual order of things; decrees:

Only article: All the acts of the executive comprised within the memorial or expo-

sition which, dated the 4th of the present month, the ministers of state in their respective departments have brought to the knowledge of this assembly, are approved.
To the executive authority.

Given in the national palace of San Salvador, the 14th day of October, 1872.

JOSE LARREYUAGO,
Deputy President.
DOSITEO FIALLOS,
Deputy Secretary.
MARIANO CASTRO,
Deputy Secretary.

National Palace, San Salvador, October 16, 1872.

Therefore let it be published.

SANTIAGO GONZALEZ.

The Minister of Foreign Relations,
GREGORIO ARBIZU.

The Minister of the Treasury and War,
J. J. SAMAYOA.

The Minister of Public Instruction, Justice, and Ecclesiastical Affairs, encharged with the Ministry of the Interior,
FABIO CASTILLO.

[Inclosure 3.—Translation.]

[*Extract from the Boletin Oficial of the 31st October, 1872.*]

The President of the Republic of Salvador to its inhabitants :

Know ye that the National Constituent Congress has decreed as follows :

The National Constituent Congress of Salvador, considering that the establishment of a bank for loans on mortgages of real estate, (banco hipotecario-agricola,) with circulation and discounts, will greatly contribute to the progress of the agriculture, industry, and commerce of the country; and that it is a paramount duty of those charged with the direction of the destinies of the nation to procure by all possible measures its prosperity and well-being; decrees :

ARTICLE 1. The supreme executive power is authorized, with shareholders both from within and beyond the republic, to establish in the country a bank for the hypothecation of real estate, with circulation and discounts.

ART. 2. The foundation capital of said institution shall not exceed five millions of dollars.

ART. 3. The privileges and guarantees that the government gives to the shareholders shall last twenty-five years.

ART. 4. The government shall not intervene in the management of the bank, and only shall have an inspection upon it.

ART. 5. The institution shall place itself under the protection of some foreign flag.

ART. 6. The nation shall have a portion of the advantages of the institution, and with this conception the government may guarantee to the shareholders a moderate conventional interest, conceding at the same time such privileges as it may deem convenient.

ART. 7. The notes of the bank shall be treated by the government as cash.

ART. 8. The rates which the bank shall fix in its division of hypothecation shall be ten per cent. of yearly interest, payable every three months, and five per cent. for amortization (cancellation) at the least at the end of the year.

ART. 9. The maximum rate of the bank in its operations of circulation and discount shall be twelve per cent. of annual interest, payable every three months.

ART. 10. To aid the operations of the institution the government shall publish the law of hypothecations, and all others tending to make effective the credits of the bank, without the formularies which are ordinarily exacted.

To the executive authority.

Given in the chambers of the National Constituent Assembly, at San Salvador, on the 24th day of the month of October, 1872.

TEODORO MORENO,
Deputy Vice-President.
DOSITEO FIALLOS,
Deputy Secretary.
MARIANO CASTRO,
Deputy Secretary.

National Palace, San Salvador, October 25, 1872.

Therefore let it be executed.

SANTIAGO GONZALEZ.

The Minister of Justice,
FABIO CASTILLO.

No. 341.

Mr. Biddle to Mr. Fish.

No. 89.]

LEGATION OF THE UNITED STATES,
San Salvador, November 30, 1872. (Received Dec. 30.)

SIR: I have the honor to transmit to you herewith a copy and translation of a constitution, dated the 9th of November instant, framed by a National Constituent Congress, reforming that of the 16th of October, 1871. The principal changes are the extension of the presidential term to four years, without eligibility to re-election during a period of equal length, and the enlargement of the executive authority in emergent cases.

The leading principles embodied in the previous constitution are preserved, with some changes in details, and that the secondary laws may conform thereto, the President has decreed the re-assembling of the convention on the 15th day of January, 1873, as per inclosure No. 2, to consider the laws of election; of the state of siege; for the press; for procedures at law; and reforms in the civil and criminal codes, and also in the laws, military and commercial.

I have, &c.,

THOMAS. BIDDLE.

[Inclosure 1.—Translation.]

CONSTITUENT CONGRESS — DECREES — CONSTITUTION PROMULGATED THE NINTH OF
NOVEMBER, 1872—GENERAL MINISTRY.

The President of the Republic of Salvador to its people:

Know ye: That the National Constituent Congress has decreed as follows:

In the presence of God, the supreme legislator of the universe, and in the name of the Salvadorean people, the National Constituent Congress decrees, sanctions, and proclaims the following constitution, re-forming that promulgated on the 16th October, 1871:

CHAPTER I.

Section 1.—Of the nation.

ARTICLE 1. The Salvadorean nation is sovereign, free, and independent.

ART. 2. The sovereignty essentially resides in the community of citizens, and its exercise is limited to the right of suffrage according to law.

ART. 3. Every public power emanates from the people. The officials are its delegates and agents, and have not other powers than those given them by law; therefore they are entitled to obedience and respect, and also must render account of their office.

Section 2.—Of the territory.

ART. 4. The territory of Salvador has for its boundaries—to the east, the gulf of Fonseca; to the north, the republics of Guatemala and Honduras; to the west, the river La Paz; and to the south, the Pacific Ocean.

The special designation shall be the object of secondary laws.

Section 3.—Form of the government.

ART. 5. The government of the Salvadorean nation is republican, popular, representative; those administering it are responsible and alternative. It is composed of three distinct and independent powers, the legislative, executive, and judicial.

Section 4.—The religion.

ART. 6. The Catholic religion, Apostolic and Roman, is that of the state, and the government will protect it. It tolerates the public worship of the Christian sects, when it does not offend morality nor the public order.

CHAPTER II.

Section 1.—Of natural born and naturalized Salvadoreans.

Article 7. Natural born Salvadoreans are :

1st. All born in the territory of Salvador, excepting the children of foreigners, not naturalized.

2d. The children of a foreigner with a Salvadorean woman, or of a Salvadorean with a foreign woman, born in the territory of the republic.

3d. The children born to Salvadoreans in a foreign land, within which they are not naturalized.

ART. 8. Naturalized Salvadoreans are those who have acquired this quality according to law, and those who hereafter become so according to the following rules:

1st. Such Spanish Americans who, having proven a year's residence in the republic, with good conduct, may obtain naturalization papers from the government, which is obliged to concede them.

2d. All other foreigners may demand and receive naturalization papers from the government, with the proof of good conduct and a residence of two years.

3d. Those who obtain naturalization papers from the legislative body.

Section 2.—Of the citizens.

ART. 9. All Salvadorean adults of twenty-one years and of good behavior are citizens, who have besides any of the following requisitions: the being father of a family or head of a house; knowledge of reading and writing, or possessing an independent livelihood. Also, adults of eighteen years, who have received literary degrees, are citizens.

ART. 10. Rights of citizenship may be suspended by regular imprisonment on a criminal charge, not bailable. 2d. By being legally declared a fraudulent debtor. 3d. By conduct notoriously vicious, or by common vagrancy. 4th. By mental imbecility; or, 5th, by judicial interdiction.

ART. 11. The quality of citizenship shall be forfeited by those, 1st. Who are convicted of unbailable offenses. 2d. Those who, residing within the republic, accept office from another nation, without lawful authority. 3d. Those naturalized abroad.

Section 3.—Of foreigners.

ART. 12. Children of foreigners born within the republic, and qualified by law should declare within one year after the qualification, before the proper authority whether they accept or not the Salvadorean nationality; otherwise they will be considered as naturalized.

ART. 13. Foreigners residing in Salvador must obey the laws, and to pay the ordinary imposts equally with Salvadoreans, and if unduly molested in their persons and interests, shall have the same guarantees as those natural born.

ART. 14. When they advance any just claim against the nation, they must have recourse to the tribunals designated by law.

ART. 15. Foreigners all may acquire real estate in the nation; said property not to be exempted from the legal charges which would weigh upon it were it in the hands of Salvadoreans.

ART. 16. The circumstance of the marriage of a Salvadorean woman with a foreigner does not deprive her of her quality as a Salvadorean, nor are her goods exempted from the imposts and contributions to which they would be subjected as of those natural born.

CHAPTER III.

Only section.—Rights, duties, and guarantees of Salvadoreans.

ART. 17. Salvador recognizes rights prior to and higher than the positive laws, it has as principles, liberty, equality, fraternity, and for bases, the family, labor, property, and the public order.

ART. 18. All the inhabitants of Salvador have incontestable rights to preserve and defend their rights and liberty; to acquire, possess, and dispose of their property, and to enjoy happiness without molestation.

ART. 19. Every one is free in the republic. There shall be no slave within the territory, nor be a citizen who traffics in slaves.

ART. 20. The republic is a sacred asylum for the foreigner who may wish to reside within its territory, unless to those guilty of crimes whom another nation demands, by virtue of existing treaties and those of extradition.

ART. 21. Every inhabitant of the territory of the republic, free of responsibility, may emigrate whenever it pleases him without necessity of passport, and may return at will.

ART. 22. Every one, free of responsibility, may travel through the territory of the

republic without the necessity of passport, and no person can be compelled to change his residence, except by virtue of the execution of a sentence.

ART. 23. Only by constitutional means can one ascend to the supreme power. If any one shall usurp it by means of force or of sedition he is guilty of the crime of usurpation; all that he shall do shall be void, and affairs shall revert to the previous condition as soon as the constitutional order is re-established.

ART. 24. Every one may freely express, write, print, and publish his thoughts, without previous examination or censorship, and only obligation to answer before the tribunals for the abuse of this liberty. The press shall not be subject to any impost or caution.

ART. 25. Equally Salvadoreans may assemble publicly and peacefully to discuss subjects of general convenience; but the originators of the meeting must advise the police of the place and hour thereof.

ART. 26. Every inhabitant of the republic may address petitions to the constituted authorities, and these must take them into consideration when they are made in a respectful manner and according to law.

ART. 27. Confiscation remains abolished. No one can be deprived of his life, liberty, honor, nor property, without previous hearing and judicial sentence, consonantly to procedure established by law, nor can one be judged twice for the same offense. The officials and individuals who violate this disposition shall be always answerable therefor in their persons and property, and without future recourse.

ART. 28. Every inhabitant of the republic has the right of being sheltered from inquisitions, examinations, and constraints in his person, his family, his house, his papers, and in all his possessions. The law will settle the manner of visiting suspected places, of searching houses to discover crimes, and of arresting delinquents to bring them to justice. No one shall be tried save in the jurisdiction wherein the crime has been committed, excepting in the cases determined by law and adjudged by the courts.

ART. 29. All are equal before the law, whether for protection or punishment.

ART. 30. Penalties should be proportioned to the nature and gravity of the offense; their true object is to correct and not to exterminate men; consequently constraint which may not be necessary to keep securely the person is cruel and not sanctioned. The death penalty remains abolished in political questions, and can only be inflicted for the crimes of assassination, of assault, and arson, when death results.

ART. 31. Only the qualified legal tribunals can adjudge the civil and criminal cases of Salvadoreans. Special commissions and tribunals are abolished, as contrary to equal rights and conditions; consequently all the inhabitants of the republic will be subjects to equal procedures established by law.

ART. 32. All causes of whatever nature shall be concluded within the Salvadorean territory, except ecclesiastical ones, when this is not possible; they shall not pass more than three "instances," and no one may withdraw the consideration of his case from the authority which the law prescribes.

ART. 33. Guarantees the writ of habeas corpus.

ART. 34. Epistolary correspondence is sacred, and cannot be intercepted, opened, nor revealed; that which may be intercepted or revealed is not evidence before the courts nor elsewhere.

ART. 35. One who gives bail shall not be detained in prison in the cases in which the law does not specially prohibit it.

ART. 36. No one to be obliged to accuse himself in a criminal prosecution, nor to be admitted to testify against his parents nor descendants, nor his wife, brothers, or brothers-in-law; and in every criminal trial to produce his own witnesses, to be confronted with the witnesses when desired, and to conduct his defense in person or by attorney.

ART. 37. The police must be intrusted to the civil authorities.

ART. 38. Arbitrations and the settlements of disputes at all stages of a cause pertain to every one, except in cases especially excepted by law.

ART. 39. The same judges may not sit in the different instances, and no authority can remove a lawsuit to a superior court for trial and to re-open judgments.

ART. 40. Property is inviolable, but it may be taken by the State for public uses, with just indemnification. All property is legally transferable and entails are forbidden.

ART. 41. Arrests can only be made by virtue of competent authority, consonantly to law, save in the actual commission of a crime, when one may be detained for delivery to the proper authority.

ART. 42. Education and the university open to all, &c. Primary education compulsory, and also gratuitous.

ART. 43. Every industry is free in the republic, saving only the profits, for the exclusive administration of the executive, of the manufacture of rum, saltpetre, and powder.

ART. 44. Allows societies for the agricultural, commercial, and industrial pursuits, &c.

ART. 45. Labor and occupation, as bases of progress and morality, are necessary, and therefore obligatory.

ART. 46. Salvadorean citizens are eligible to office upon merit only and the legal conditions.

ART. 47. Neither the legislative, executive, nor judicial powers, nor any other tribunal or authority, can qualify, change, or violate any of the aforesaid guarantees; and whoever of the high powers may infringe them shall be considered an usurper, and be individually responsible for the resulting injury, and be proceeded against according to the chapter on responsibility of this constitution.

CHAPTER IV.

Of the elections.

These are regulated by articles 48, 49, 50, 51, and 52.

ART. 53. No employé appointed by the executive can be elected senator or deputy till six months after his functions have ceased.

ART. 54. Senators and deputies may be presidential appointees after the term of their inviolability, *ipse facto* renouncing their character as representatives.

ART. 55. No ecclesiastic can obtain office by popular election.

CHAPTER V.

Section 1.—Legislative power and its organization.

ART. 56. To be of two independent houses, senate and deputies.

ART. 57. To convene without convocation in the capital of the republic from the 1st to the 15th of January of each year, and in extra sessions when called, &c.

ART. 58. Its ordinary session not to exceed forty, and the extra ones to be those necessary to resolve the points expressed in the convocation.

Articles 59, 60, 61, as to quorums, adjournments, &c.

ART. 62. The chamber of deputies shall be renewed each year, and its members may be re-elected. The senate shall be renewed by thirds each year.

Section 2.

Articles 63, 64, and 65. Qualifications.

Articles 66 and 67. Their persons inviolable.

ART. 68. Powers peculiar to each of the chambers.

Section 5.—General attributes of the legislative power.

ART. 69. It belongs to the legislative power to decree, interpret, amend, and repeal the laws; second, to create jurisdictions, &c., civil and criminal; third, to define the attributes of functionaries; fourth, to establish taxes and imposts upon all sorts of goods and property in due proportion, and to decree forced loans in cases of invasion or of war legally declared when the usual revenue is insufficient or voluntary loans cannot be effected; fifth, to empower the executive to contract voluntary loans within or from without the republic when necessity demands, and in sufficient quantity to meet the necessity; sixth, to settle and decree annually the estimates of the expenses of the public administration; seventh, to create the army of the republic, and to confer the grades from colonel up; eighth, to superintend public instruction; ninth, to decree the arms and standard of the republic, to settle the alloy, weight, and coinage of the money, to regulate weights and measures, and to decree the opening and bettering of public roads; tenth, to grant to persons or places titles, honorary distinctions, and gratifications compatible with the established system of government for great services rendered the country; eleventh, to fix salaries and offices; twelfth, to issue patents for inventions; thirteenth, to declare war and make peace with reference to the information communicated by the executive authority; fourteenth, to concede amnesties, pardons, commutations, &c.; fifteenth, to concede letters of naturalization to foreigners soliciting them; sixteenth, to declare the state of siege, &c.; seventeenth, to rehabilitate those who have lost citizenship; eighteenth, to concede or deny permission to Salvadoreans to accept foreign employ from other states; nineteenth, to exact responsibility from the higher employés, &c.; twentieth, to ratify, modify, or to disapprove the different treaties and negotiations which the executive concludes with other powers, and the concordats adjusted with the Holy See.

ART. 70. Extra sessions to be confined to the subject of convocation.

ART. 71. The senate may prolong its sessions for its special functions.

Section 6.—General assembly.

ART. 72. To be composed of both chambers united. Its attributes are, first, to open the sessions of the legislative body; second, to certify the election of the president, &c.; third, to determine its regularity; fourth, to install the president, &c., and to receive his resignation, &c.; fifth, to select the supreme judges, &c.; sixth, to receive the reports of the executive through the cabinet, &c.; seventh, to certify the national

debt and arrange for its extinguishment; eighth, to designate the senators to exercise the executive power in the cases determined by law; ninth, to resolve doubts or questions as to the incapacity of the President, &c.; tenth, to adjourn their sessions, &c.

Article 73 declares these powers indelegable with the exception of the administration of official oaths.

Section 7.—Formation, publication, and sanction of the law.

Articles 74, 75, 76, 77, 78, 79, and 80 provide a system of legislation similar to that of the United States, giving the President a veto under the same terms.

CHAPTER VI.

Executive power and its organization.

ART. 81. The executive power shall be exercised by a citizen who shall receive the title of President of the republic, named directly by the Salvadorean people, but when there is not a majority of votes, the general assembly shall select one from the three who have had the highest number of votes.

Article 82, ditto as to the vice-president.

Article 83 provides for vacancies, &c.

Section 2.—Duration of the presidential term.

ART. 84. The duration of the presidential term shall be for four years without immediate re-election, but eligibility recommences after the expiration of an equal period.

Section 3.—Qualities.

To be President or vice-president of the republic, it is requisite to be natural-born of Salvador, to be of thirty years of age, and a citizen for five years prior to the election, and to be of good character and education. Inhabitants from the other portions of Central America may be elected to the presidency or vice-presidency, adding to the above qualifications, first, a residence of ten years and marriage with a Salvadorean; second, after a residence of five years, with important services to the nation, or having a capital of ten thousand dollars in real estate, situated in the republic.

Section 4.—Secretaries of state and their qualities.

ART. 86. There shall be four secretaries of state: of foreign relations, of the interior, of treasury and war, and of public instruction, among whom the President may distribute other branches as he may deem convenient.

ART. 87. They must be natural-born to Central America, laymen, of twenty-five years of age, of good character and ability, and not to have lost the rights of citizenship within five years.

ART. 88. The decrees, resolutions, and manifests of the President of the republic must be attested by the respective secretaries of state.

Section 5.—Commander-in-chief of the army.

ART. 89. The citizen who exercises the presidency of the republic shall be commander-in-chief of the army.

Section 6.—Duties of the executive power.

ART. 90. The duties of the executive power are, 1. To maintain harmless the sovereignty and independence of the republic and its territorial integrity. 2. To preserve peace and domestic order. 3. To publish and execute the law. 4. The regular presentation to the legislature, of messages, reports, returns, &c., concerning public affairs, and estimates of financial needs for the coming year, with indications how best to be fulfilled, &c. Penalty for non-compliance, suspension of the defaulting secretary, &c., and even of the President himself, &c. 5. To give to the chambers such information as they shall require, but to withhold that relating to subjects of reserve, &c., not being obliged to divulge plans of war, nor the negotiations of high politics, but when the nature of the exigency justifies it; then, after a demand by the house of deputies before the senate, the documents must be produced. 6. To aid the judiciary in the effective administration of its duties.

Section 7.—Faculties of the executive power.

ART. 91. The faculties of the executive power are, 1. The appointment and removal of cabinet and revenue officers, governors of departments, commandantes, general and local, and to accept the resignation of army officers from the rank of lieutenant-colonel down, and of all the administrative employés. 2. To nominate and remove diplomatic and consular agents. To receive those from abroad, and to direct the foreign relations. 3. To convoke extraordinary legislative sessions, &c. 4. To make dispositions as to locality for the convening of the same. 5. To direct war, and organ-

ize the army, being able to dispose of the public revenue to this end. 6. To conclude treaties of peace and whatever other negotiations, submitting them for the ratification of the legislature. 7. To command in person the army, in which event he shall en-charge the executive power to whom it pertains. 8. To levy the necessary force, above the standing army, to repel invasion, or subdue rebellion. 9. To permit or refuse the transit of troops of other countries through the republic. 10. To open and close ports, and to establish maritime and internal custom-houses, and to nationalize vessels. 11. To exercise the right of patronage. 12. To regulate titles and commissions, &c. 13. To suspend the execution of the death penalty until the meeting of the legislature. 14. To exercise the veto according to law. 15. To exercise the attributes of the legislative body, as in articles 14, (save the pardoning power,) 15, 16, 17, and 18, during its adjournments, and with obligation to account to it therefor at its next session.

Section 8.

Article 92 prescribes the attributes of the executive on the sanction and promulgation of the laws.

Section 9.

Articles 93, 94, 95, 96, 97, 98, and 99 regulate the political government of the different districts or departments, and of the towns.

CHAPTER VII.

Articles 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 regulate the system of the judiciary.

CHAPTER VIII.

Section 1.—The national treasury. Revenues which compose the treasury.

ART. 116. The public treasury of the nation shall be composed of: First. All the property, personal and real. Second. All the assets. Third. All the duties, imposts, and contributions paid, or hereafter to be paid, by Salvadoreans and foreigners.

Section 2.

Articles 117, 118, and 119 provide for the administration and auditing thereof.

CHAPTER IX.

Only section.—The armed force.

ART. 120. The armed force is instituted to keep harmless the integrity of the territory, to conserve and defend the national autonomy, to enforce the law, to preserve order, and to make effective constitutional guarantees.

ART. 121. The armed force is essentially obedient and cannot deliberate.

ART. 122. The armed force is composed of the soldiery and the navy. Its number shall be six thousand men. Its peace establishment shall be annually regulated by the legislature.

Article 123 relates to the compensations.

ART. 124. In cases of invasion, of war lawfully declared, and of rebellion, all the Salvadoreans between 18 and 50 years of age are soldiers.

CHAPTER X.

Articles 125, 126, 127, 128, 129, 130, 131, 132, and 133 prescribe the responsibility of public functionaries, and the formulas of impeachments and other procedures.

CHAPTER XI.

Only section.—General dispositions.

ART. 134. The republic of Salvador respects foreign nationalities, and will never engage in war with a view to annexation or conquest, nor will it employ its forces against the liberty of any people, but will respect autonomy, independence, and right wherever its power may extend.

ART. 135. With the object of promoting the Central American Union, complete equality of political rights is accorded to the people of the other republics, provided that reciprocity is extended in their respective constitutions.

ART. 136. Salvador remains prepared to arrange with all or with any of the states of Central America for the organization of a national government, when circumstances permit and interests coincide, so as to form portion of the great Latin-American Confederation.

CHAPTER XII.

Only section.—Revision and reform of the constitution.

ART. 137. The reform of this constitution only can be effected by the votes of two-thirds of the representatives elected to each chamber. This action shall be published

by the press, and shall be considered by the next legislature. If this ratifies it, a constituent assembly shall be convoked to decree the reforms.

ART. 138. Thus the constitution of 16th October, 1871, is reformed, and the articles not herein comprised are annulled. The existing codes, laws, and regulations which may not be repugnant to the present constitution shall remain in force until legally repealed.

Additional temporary article provides that public functionaries under the former constitution are to remain in office, &c.

To the executive power: Given in Salvador, at the National Palace, the 9th day of the month of October, of the year 1872 of the Christian era, and the 52d of our independence.

(Here follow the signatures of the deputies.)

National Palace, San Salvador, November 12, 1872.

Let it be executed and published.

S. GONZALES.

The minister of foreign relations,

GREGORIO ARBIZU.

The minister of treasury and war,

J. J. SAMAYOA.

The minister of public instruction, are charged with the portfolio of the interior,

FABIO CASTILLO.

No. 342.

Mr. Biddle to Mr. Fish.

No. 95.]

LEGATION OF THE UNITED STATES,

San Salvador, December 12, 1872. (Rec'd Jan. 29, 1873.)

SIR: I have the honor to transmit to you herewith a copy and translation of a communication, dated the 11th instant, addressed to me by the acting minister of foreign relations, Don Manuel Caceres, giving official information of the death on the 10th instant of Señor Doctor Don Gregorio Arbizu, the minister of foreign relations of Salvador.

Señor Arbizu died of pulmonary consumption after a protracted illness. He was a man of great ability, and, while in health, skillfully conducted his important ministry for a long period under successive governments.

The loss of two such prominent statesmen as Señors Mendez and Arbizu, within a few months of each other, and at critical periods, is severely felt, although for many months the condition of the latter was apparent.

I inclose a copy of my answer to Señor Caceres, dated the 12th instant.

I have, &c.,

THOMAS BIDDLE.

[Inclosure 1.—Translation.]

Mr. Caceres to Mr. Biddle.

MINISTRY OF FOREIGN RELATIONS OF SALVADOR,

National Palace, San Salvador, December 11, 1872.

SEÑOR: The painful impression caused by the tragic death of the deserving Don Manuel Mendez was yet depressing the country when a new affliction has disturbed the national sensibility. Yesterday, at 10 o'clock a. m., the illustrious Señor Doctor Don Gregorio Arbizu, minister of foreign relations, died.

The whole cabinet, especially the Citizen Marshal President, in a word, the Salvadorean people, have felt, in the profoundest manner, such an irreparable loss.

Señor Arbizu, as you know, consecrated the greater part of his valuable life to his country, occupying positions of high importance, and rendering services of the first

order. To a great soul he united a vast intelligence and a pure heart. He was a model of virtue and an ardent patriot.

By direction of the Señor Marshal President, I comply with the sad duty to announce to you this painful intelligence, requesting you to please bring it to the knowledge of the Government which, with so much applause, you represent.

With the highest consideration, I am, &c.,

The assistant secretary of the department,

MANUEL CACERES.

[Inclosure 2.]

Mr. Biddle to Mr. Caceres.

LEGATION OF THE UNITED STATES,
San Salvador, December 12, 1872.

SIR: I have the honor to acknowledge the receipt of your communication of the 11th instant, conveying the painful intelligence of the death of the eminent statesman Señor Doctor Don Gregorio Arbizu, who has for so long a period and so ably conducted the ministry of foreign relations of Salvador.

The various treaties between your republic and foreign powers negotiated by him will be living monuments to his fame for succeeding generations, and, with the illustrious Don Manuel Mendez, his name will be inscribed on the roll of honor as of those who have devoted genius, labor, fortune, and life on the altar of their country.

Transmitting the sad information to my Government, as you have requested, with the fullest expressions of condolence, and of my highest consideration,

I have, &c.,

THOMAS BIDDLE.

Señor DON MANUEL CACERES,
Acting Minister of Foreign Relations of Salvador.

No. 343.

Mr. Biddle to Mr. Fish.

No. 100.]

LEGATION OF THE UNITED STATES,
San Salvador, January 29, 1873. (Rec'd February 20.)

SIR: I have the honor to transmit to you herewith an official statement of the receipts and expenditures of Salvador for the fiscal year 1872.

The national indebtedness amounts to nearly a million and a half dollars, which forms a heavy incumbrance after the prostration to commercial activity, resulting from the late wars, and the present depression in the indigo market. Coffee alone continues active, with high prices.

The stagnation in business is increased by the unsettled conditions of Guatemala and Honduras. Salvador continues tranquil, but the conflagration of civil disturbance so frequently extends from state to state that its apprehension checks commercial enterprise.

The late treaty with Guatemala calls for Salvadorean troops in aid of that government when assailed, and the relations with President Avias of Honduras are yet more intimate, so that all seem linked to a common fate.

The reactionary spirit doubtless also exists here, but it remains silent and smouldering, and will not become dangerous except through contagion from the adjacent countries.

Troops have been sent to the frontiers to check demonstrations, and the government is confident in the hope of continued peace.

I have, &c.,

THOMAS BIDDLE.

No. 344.

Mr. Biddle to Mr. Fish.

No. 107.]

LEGATION OF THE UNITED STATES,
San Salvador, March 10, 1873. (Received April 8.)

SIR : In my No. 99 I mentioned the series of earthquakes occurring here in the months of December and January last. While San Vicente was materially injured thereby, the city of San Salvador, and other settlements, had remained unscathed.

With the first of March tremblings of the earth recommenced, increasing in violence, until the afternoon of the 4th instant, when a terrific *temblor* suddenly shook the houses in the capital to their very foundations, causing much devastation, and more alarm. Over eighty subsequent shocks have occurred, with serious loss to property, both of houses and movables, but happily unattended with loss of life. These phenomena continued, producing great demoralization in the population, two-thirds of which have sought refuge in the open country. The authorities have exerted commendable vigilance and energy to preserve tranquillity. The military are under arms, and police guards patrolling, to avert the crime which evil men avail themselves of these occasions to perpetrate.

Volcanic eruptions are reported from Izalco, Santa Ana, and other localities, which may be regarded as safety-valves to a danger, for the cause and extent of which no two scientific men seem to hold a similar opinion.

The earthquakes are reported all over the state as with greater or less violence.

The diffusion of the damage over town and country, and particularly to the flimsy structures of the poor, is the real evil, rather than an overwhelming loss in any one spot. Few houses are actually leveled, but collapsed roofs, creviced walls, broken chattels, &c., are visible at every step, and, indeed, surround me as I write. Many of the finest dwellings here will be utterly untenable.

It is impossible to compute the damages at this date, but they are serious to a community which has already suffered so many inflictions.

The domestic political tranquillity remains undisturbed notwithstanding the commotions in Guatemala and Honduras, and the material aid in troops furnished by Salvador to the governments of those republics.

I have, &c.,

THOMAS BIDDLE.

No. 345.

Mr. Biddle to Mr. Fish.

No. 110.]

LEGATION OF THE UNITED STATES,
San Salvador, March 18, 1873. (Received April 21.)

SIR : I have the honor to transmit herewith a copy extracted from the Boletin Oficial of the 8th instant of a treaty of friendship, commerce, and navigation concluded between the republic of Salvador and Germany on the 13th of June, 1870, the ratifications of which were exchanged in Berlin on the 19th of September, 1872.

Article 1st stipulates for perpetual peace and friendship between the two nations and their citizens.

Article 2d provides for reciprocal free commerce and navigation in all ports, rivers, and as to the most favored nations.

Article 3d establishes the right of mutual free ingress and egress, residence, trade, and ownership of real estate, &c., and exemption from contributions, general or local, or to imposts or obligations of whatsoever kind, except such to which natives of the countries are subjected, granting every facility for the transaction of all custom-house business, whether for themselves or as agents, factors, &c., upon the same terms as to natives or to citizens of the most favored nation, always conforming to the laws and regulations of the country.

By Article 4th complete protection to persons and property, with free access to the tribunals, &c., with the right to select attorneys at law, agents, &c., is guaranteed, with the right to be present when judgments or sentences are pronounced in cases where they are interested, as also in the examination of witnesses, whenever consonant to the laws of the land. In a word, they are to enjoy all the rights and privileges of natives of either country.

By Article 5th Salvadoreans in Germany or Germans in Salvador are exempted as well from every description of service in the army or navy, police or militia, as from obligation to accept political responsibilities and office, administrative or judicial, and also from all exceptional war contributions, forced loans, requisitions, or military services of whatever kind. In all other cases they can only be subjected in their personal and real property to the ordinary charges, exactions, and imposts imposed on natives or the citizens of the most favored state.

By Article 6th they may not respectively be subjected to any embargo, nor to have their vessels, cargoes, merchandise, or effects detained on account of whatever military expedition, or public use, without a previous arrangement, assessed by experts selected by those interested, for sufficient indemnification for all prejudices, losses, delays, and damages occasioned thereby, or which may result therefrom.

Article 7 stipulates for the enjoyment of liberty of conscience and public and private worship, with the reverence due to the Deity and respect to the laws, ways, and customs of the countries. Also the right to the burial of their dead in convenient and proper places selected by themselves, with assent of the local authorities; and funerals and graves shall not be disturbed through any pretext.

By Article 8th they may mutually acquire every class of personal and real estate, use and dispose of them at will, by sale, gift, exchange, testament, or in any other way; they may also inherit property by devise or through the intestate laws, provided, always, that they shall pay the same taxes on such transfers as do native citizens.

Marriages contracted in the one country conformably to its laws shall be held as valid in the other.

When acquired property is exported to either country no charges known as "*jus detractus*," gavel tax, or emigration assessment, or any other to which natives are not subjected.

Article 9 declares that if unhappily the peace between the two high contracting parties shall be interrupted, each shall concede a term of six months at least to the merchants on the coast, and a year to those established within the interior of the countries, to arrange their business and dispose of their property; also, they shall receive "safe conducts," that they may freely embark at the ports which they may designate, so that they be not occupied or besieged by the enemy, or imperil their own security or that of the state; in which cases they must select whatever route is practicable.

All the other citizens having a fixed and permanent establishment in the respective countries, for the pursuit of whatever profession or employment, may continue their residence and the exercise of their professions and vocations without disturbance; and they shall retain the complete and entire possession of their liberty and property, provided they commit no offense against the laws of the land.

By Article 10th, in no case of war, or of collision between the two countries, shall there be subjected to embargo or sequestration, &c., property, of whatever kind, of the respective citizens. Sums owing by them to individuals, public funds, stocks in bank, or similar institutions, can be embargoed, sequestered, or confiscated with prejudice to the said respective citizens.

By Article 11th the merchants of either country within the territories of the other shall enjoy in their business all the rights, privileges, and franchises conceded to those of the most favored nations.

Wherefore the importation dues of Salvador upon the productions of the soil or industry of Germany, and in Germany upon those of Salvador, cannot be other nor greater than those imposed on similar productions of the most favored nations. The same principle is applied to exportation. No special restriction or prohibition is to apply to their reciprocal commerce; and all rules and regulations affecting the same to apply equally to all countries.

By Article 12th the shipping of either state in the waters of the other shall not be subject to higher duties of tonnage, light-house, port, pilotage, quarantine, or others which affect the ship, than to those of the vessels of the nation.

Tonnage dues, &c., shall be computed consonantly to the register of the vessel.

Article 13 equalizes dues upon importation and exportation under either flag.

Article 14 regulates port charges on the same basis.

Article 15 provides that vessels of either country wrecked or distressed on the coasts of the other, or driven by stress of weather, &c., into their ports, shall not be subjected to navigation dues, under whatever name, save such as under like circumstances vessels of the country shall be subjected. Also, they shall be allowed to transfer the cargo to other vessels, or to land and warehouse it for its preservation without the exaction of other charges for freight of vessels, rent of warehouses, and the use of public dock-yards which may be necessary for the deposit of the merchandise or the repairs of the ship. Every facility and aid shall be lent to this end, as well as for the obtaining provisions and restitution of sea-worthiness.

By Article 16th all regularly documented vessels of either nationality shall be respected as such in the ports of either.

Article 17 prescribes that recaptures, &c., from pirates shall be returned to their former owners after payment of expenses thereof lawfully assessed upon proof of property, to be paid within the year.

Article 18 accords to the ships of war of either country in the ports of the other the same rights as to those of the most favored nation.

By Article 19th, in the event of war between one of the contracting parties and a third power, the other can, in no event, authorize its citizens to receive commission or letters of marque for hostile operations against the first, or to harass the commerce or effects of its people.

By Article 20 the two high contracting parties adopt for their mutual relation the following principles:

1. The abolition of privateering.

2. The neutral flag protects enemy's goods, with the exception of contraband of war.

3. Neutral goods, with the exception of contraband of war, cannot be seized under the enemy's flag.

4. Blockades to be obligatory must be effective—that is to say, maintained by a sufficient force to actually hinder access to the territory of the enemy.

It is also agreed that the free flag assures also that of the persons, and that individuals of a hostile power who may be found on board of a neutral vessel cannot be made prisoners, unless they may be military men, and are at the time in the service of the enemy.

The two high contracting parties do not apply these principles in their relations with other powers except to those who equally recognize them.

Article 21 prescribes that in the event of one of the contracting parties being at war, and its ships, exercising the right of visitation, should meet a vessel of the other remaining neutral, the first shall keep themselves out of the range of cannon, and may send in their boats only two inspectors to examine the documents as to nationality and cargo.

The commanders shall be responsible for every oppression or violence which they commit or allow on such occasion. It is also stipulated that in no case shall the neutral be obliged to go on board of the visiting vessel, neither to show his papers, nor for any other reason. The visitation shall not be allowed except on board of ships which sail without convoy. It will suffice when they proceed with convoy that the commander declare verbally and upon his word of honor that the vessels placed under his protection and sheltered by his power belong to the country whose flag they hoist, and that he also declares that when these vessels are destined for an enemy's port, that they do not carry contraband of war.

By Article 22, in the event of either country being at war with a third power, the citizens of the other may continue their commerce and navigation with this same power, excepting to cities or ports actually besieged and blockaded, but this shall not extend to the carriage of contraband of war, such as fire-arms, side-arms, projectiles, powder, saltpeter, military equipments, and whatsoever articles intended for use and war.

In no event can a merchant ship of either country be captured and condemned, encountered bound for a blockaded port, without previous notification or knowledge of the existence of the blockade from vessels of the blockading squadron; and proof of such notice should therefore be inscribed upon the ship's papers by the officer imparting the same, with due formality.

Article 23 provides for the establishment of consuls for the protection of commerce, the issuing of exequaturs, &c.

Article 24 applies the most favored clause to these consular officers.

Consuls sent, (*consules enviados*), citizens of the contracting party which names them, shall enjoy immunity to their dwellings, and from direct contributions, whether they be personal or otherwise, imposed by the state or the municipalities. But if the said agents become merchants, or pursue any employment or possess landed property, they shall be considered as citizens of the state to which they belong in that pertaining to charges and contributions.

Consuls sent, (*consules missi*), citizens of the contracting party which names them, shall enjoy personal immunity, so that they cannot be arrested or imprisoned save for serious offenses.

In relation to consuls, citizens of the country of their residence, or merchants, the personal immunity is understood to apply only to debts or civil causes which do not originate with the business which they pur-

sue nor through their dependents. Said agents may place upon the outer door of their residence the arms of their country, an inscription, ——— consulate of ———; they can also display on public and national festal days the flag of their country at the consulate; but the right of asylum, notwithstanding these exterior symbols, is not conceded. In case of the death, illness, or absence of these officers their chancellors or secretaries may act for them, *ad interim*.

By Article 25 the archives, and, in general, all the papers of the chancery of the respective consulates, are inviolable and cannot be taken or inspected by the legal authority under any pretext and in no event.

Article 26 regulates the appointment of vice-consuls and consular agents.

Article 27 prescribes the powers and procedures of those consular officers with intestate estates, &c.

When there may have been no consul where the deceased was resident the proper authorities shall act as in the case of the estate of a native of the country, notifying thereof the nearest consular officer as soon as possible.

These consular officers shall be considered as the guardians of the orphans and minors of their respective countries, as to their persons and property, under the responsibilities created by their laws.

By Article 28 the consular officers are to be exclusively charged with the interior police of the merchant ships of their countries, and the local authorities cannot intervene unless the disorders are of such a nature as to disturb the public tranquillity, whether on land or on board the vessels. But in all which concerns the police of the ports, to the loading and unloading of vessels, to the safety of merchandise, goods and effects, the citizens of the two countries shall be respectively subject to the local laws.

Article 29 refers to the rendition of mariners deserting from their vessels. From this article, seamen native of the foreign state are excepted.

By Article 30, in the absence of stipulations to the contrary by those interested, consuls are to adjust marine averages, &c.

Article 31 regulates the procedure of consuls in case of wreck.

By Article 32, should one of the contracting parties deem that any of the stipulations of the treaty have been infringed to his detriment, he should address immediately to the other party a statement of the facts, jointly with a demand for reparation, accompanied with necessary documents and proofs to establish the lawfulness of the remonstrance. Reprisals or hostilities cannot be authorized until the reparation sought has been denied or arbitrarily postponed.

By Article 33 the treaty is to continue until December 31, 1877, commencing with the date of the exchange of ratifications, and a year's notice to be given before expiration of the limitation, or the treaty to continue in force another twelve months, and so on.

By article 34, the treaty, composed of 34 articles, is to be ratified in Berlin within twelve months, or sooner, if possible. In the ratifications the 9th section was thus interpreted by mutual consent of both governments.

In the unfortunate event of a war between the two high contracting parties, as well the merchants as all the other citizens of the one residing within the territory of the other, without any exception, may continue their residence and the free exercise of their profession and industry without disturbance, while they do not commit any offense against the laws of the country.

The liberal provisions of this treaty, especially regarding the amelioration of war, and the recognition of neutral rights and obligations as between the contracting parties, with the privileges and exemptions granted to their respective citizens, and also the specifications of power and obligation to their consular officers, and the consideration that the "most favored clause" in the treaties between the United States and Salvador may apply many of these stipulations to our own affairs with this republic, has prompted me to present the foregoing analysis.

I have, &c.,

THOMAS BIDDLE.

[Translation.]

Treaty of friendship, commerce, and navigation between the republic of Salvador and His Majesty the King of Prussia, in the name of the North German Confederation, and of the Zollverein.

The republic of Salvador, on the one hand, and on the other His Majesty the King of Prussia, in the name of the North German Confederation, and of the members of the German trade and customs union, called the Zollverein, not belonging to said confederation, to wit, the kingdom of Bavaria, the kingdom of Wurtemberg, the grand duchy of Baden, and the grand duchy of Hesse, for their possessions situated south of the Main, as well as for the grand duchy of Luxemburg, which adheres to their system of customs and imposts on one hand, desiring reciprocally to strengthen and draw closer their relations and interests, have resolved to conclude a treaty of friendship, commerce, and navigation.

To this end they have appointed their respective plenipotentiaries, to wit:

His excellency the President of the republic of Salvador, Dr. Rafael Zaldivar, envoy extraordinary and minister plenipotentiary;

His Majesty the King of Prussia, his minister of state, Martin Frederick Rodolphus Delbruck, president of the chancery of the North German Confederation;

Who, after having exhibited their full powers, have agreed upon the following articles:

ARTICLE I.

There shall be peace and perpetual friendship between the republic of Salvador, on the one hand, and the North German Confederation and the states forming the German Zollverein, on the other, and between the citizens of both parties, without exception of persons or places.

ARTICLE II.

There shall be, reciprocally, full and entire freedom of trade between the territories of the republic of Salvador and all the territories of the German states.

The citizens of the high contracting parties may go freely, and with all safety, with vessels and cargoes, to all those places, ports, and rivers of Salvador and Germany where navigation now is, or may hereafter be permitted, for vessels and cargoes of any nation or state.

Salvadoreans in Germany, and Germans in Salvador, shall enjoy, in this respect, the same liberty and security as native citizens. As regards trade in intermediate ports, and the coasting trade, they shall be treated as the citizens of the most favored nation.

ARTICLE III.

The citizens of each of the two high contracting parties may enter, with perfect freedom, any portion of the territories of the other, reside there, travel, carry on trade, either at wholesale or retail, rent and own such warehouses and stores as they may need, transport merchandise or coin, and receive consignments both from the interior and from foreign countries, without being in any case subjected to the payment of taxes, either general or local, or to imposts or obligations of any kind whatever, save those which now are, or may hereafter be, exacted from native citizens.

They shall be at perfect liberty to transact their own business, to present their own statements at the custom-house, or to obtain the assistance of, or be represented by, whomsoever they may think proper, either under the designation of attorneys, factors, agents, consignees, interpreters, or anything else, either for the purchase or sale of their property, effects, or merchandise, or for the loading, discharging, or dispatch of their vessels.

They shall have the right to transact such business as may be intrusted to them by their countrymen, by foreigners or by natives, in the capacity of attorneys, factors, agents, consignees, or interpreters; and in no case shall they be subjected to the payment of any taxes or imposts other than those which are levied upon native citizens, or the citizens or subjects of the most favored nation.

They shall enjoy equal liberty in all their purchases and sales to fix the prices of goods, merchandise, and articles of all kinds, whether imported or intended for exportation.

In all this it is understood that the laws and regulations of the country shall be obeyed.

ARTICLE IV.

The citizens of both contracting parties shall enjoy the fullest and most constant protection for their persons and properties. They shall have free access to the courts of justice for the prosecution and defense of their rights. To this effect they may, under any circumstances, employ such lawyers, attorneys, or agents of any kind as they may choose.

They shall have the right to be present to hear the decisions and sentences of the courts in cases in which they may be interested, as also the examinations and depositions of witnesses which may take place in connection with trials, whenever the laws of the respective countries shall permit the publicity of such matters. Finally, they shall enjoy, in this respect, the same rights and privileges as native citizens; and they shall be subjected to the same conditions that are imposed upon the latter.

ARTICLE V.

Salvadoreans in Germany, and Germans in Salvador, shall be exempt from all personal service in the national army or navy and the national guard or militia, and likewise from the duty of accepting any functions or offices, whether political, administrative, or judicial; likewise from all extraordinary war taxes, forced loans, military requisitions or services of any kind whatever. In all other cases they shall not be subjected, either for their personal property or real estate, to any charges, taxes, or imposts other than those which are exacted from the citizens or subjects of the most favored nation.

ARTICLE VI.

The citizens of neither of the two countries shall be subjected by the other to any seizure, nor shall their vessels, cargoes, merchandise, or effects be detained for any military expedition or for any public use, unless a suitable indemnity shall have been previously fixed, according to custom, by the parties interested, or by experts appointed by them, for all injuries, losses, delays, and damages which may be caused by the use to which they may be applied or which may result from the same.

ARTICLE VII.

Salvadoreans residing in Germany, and Germans residing in Salvador, shall enjoy perfect freedom of conscience, and the respective governments shall not permit them to be molested, annoyed, or disturbed on account of their religious belief, or for the exercise of their religion in private houses, in chapels, or other places of worship, with the decorum which is due to the Deity, and the respect which is due to the laws, manners, and customs of the country.

Salvadoreans and Germans shall likewise be at liberty to bury their countrymen who may die in Germany or in Salvador in suitable places designated and set apart by them, with the consent of the local authorities, or in such burial places as may be selected by the relatives or friends of the deceased; and such funerals shall on no account be disturbed.

ARTICLE VIII.

The citizens of each of the contracting parties shall have the right to purchase and hold, in the territory of the other, all kind of personal and real property; also the right to use the same with perfect freedom, and to dispose of it as they may see fit, by sale, gift, exchange, testament, or in any other manner. In like manner the citizens of one of the countries, who are heirs to property situated in the other country, may succeed, without impediment, to such portion of said property as may become theirs *ab intestato* or by testament, with power to dispose of the same as they may see fit; they shall, however, in such cases, pay the same taxes that are paid by natives of the country.

The marriage of a Salvadorean shall be considered as valid in Germany, and the marriage of a German shall be considered as valid in Salvador, if such marriage shall have been contracted according to the laws of their respective countries.

If it shall be desired to export property acquired, by whatever title, by Salvadoreans in Germany or by Germans in Salvador, in neither country shall there be levied upon such property any of the taxes known as *jus detractus*, gavel tax, emigration assessment, or any other to which native citizens are not subjected.

ARTICLE IX.

If (which God forbid) there should be a rupture of the peace between the two high contracting parties, a term of six months at least shall be granted by both parties to merchants on the coast, and of one year to those in the interior of the country, to settle their affairs and dispose of their property. They shall also be furnished with a safe-conduct to enable them to embark in such port as they may designate of their own accord, provided it be not besieged or blockaded by the enemy, and that their going to such port may not compromise their own security or that of the state, in which case they shall embark at such place and in such manner as may be possible.

All other citizens having a fixed and permanent establishment in either of the two countries for the exercise of any profession or trade, may retain their establishments, and continue to exercise their professions or trades, without being in any way molested; and they shall be left in the full and entire enjoyment of their liberty, and of their property, provided they commit no offense against the laws of the country.

ARTICLE X.

In no case of war or collision between the two countries shall property or goods of any kind belonging to citizens of either of the contracting parties be subjected to seizure or sequestration, or to any other taxes or imposts than those which are exacted of native citizens. Sums due to them from private individuals, public funds, and shares of stock in banks or companies which may belong to them, shall, moreover, not be seized, sequestrated, or confiscated to the prejudice of the aforesaid citizens.

ARTICLE XI.

Salvadorean merchants in Germany, and German merchants in Salvador, shall enjoy all the rights, liberties, and franchises for their trade which are, or may hereafter be, granted to the citizens or subjects of the most favored nation. Import duties levied in Salvador upon the products of the soil or of the industry of Germany, and in Germany upon the products of the soil or of the industry of Salvador, shall, therefore, not be other or higher than those which are or which shall hereafter be levied upon the same products of the most favored nation. The same principle shall be observed in regard to exportation.

In the reciprocal commerce of the two countries no prohibition or restriction of the importation or exportation of any article shall take place, if it do not extend, at the same time, to all other nations; and the formalities which may be required in proof of the origin of merchandise imported from one of the two countries into the other shall likewise be common to all other nations.

ARTICLE XII.

Salvadorean vessels, on their entrance into or departure from Germany, and German vessels arriving in the ports of Salvador, or leaving the same, shall not be obliged to pay higher tonnage or light-house dues, port-charges, pilotage, quarantine, or other dues for the vessel than are exacted from vessels belonging to natives of the country.

Tonnage and other dues which are computed according to the capacity of the vessel shall be collected in Salvador from German vessels according to the German register of each vessel, and *vice versa*.

ARTICLE XIII.

All articles, of whatever kind, imported into the ports of one of the two countries under the flag of the other, whatever may be their origin, and from whatever country the importation may be made, shall pay no other nor higher import duties, and shall be subject to no other taxes than if they had been imported under the national flag.

In like manner, all articles, of whatever kind, exported from one of the two countries, under the flag of the other, to any country whatever, shall be subjected to no other duties or formalities than if they had been exported under the national flag.

ARTICLE XIV.

Salvadorean vessels in Germany, and German vessels in Salvador, may discharge a portion of their cargo in the port where they first arrive, and then proceed with the rest of their cargo to the other ports of the same country, either to finish discharging their cargo, or to complete their return cargo, paying in each port no other and no higher duties than are paid by vessels belonging to native citizens under similar circumstances.

ARTICLE XV.

Vessels belonging to citizens of one of the two high contracting parties which may be wrecked or sunk on the coasts of the other, or which, by reason of proven stress of weather or damage sustained, may enter the ports or touch upon the coasts of the other, shall be subjected to the payment of no navigation dues, under whatever name

they may be established, save those duties to the payment of which vessels belonging to natives of the country are subjected under similar circumstances.

They shall be permitted to transfer the whole or a part of their cargo to other vessels, or to land and store the same, to prevent the goods from being lost; and they shall be required to pay no charges save for freight, storage, and the use of such public dock-yards as may be necessary for the depositing of the goods and the repairing of the damage suffered by the vessel. Every facility and protection shall also be granted to them for this purpose, as likewise in order to procure provisions and to be enabled to continue their voyage, without any hinderance.

ARTICLE XVI.

All vessels sailing under the Salvadorean flag shall be considered as Salvadorean vessels in Germany, and all vessels sailing under the German flag shall be considered as German vessels in Salvador, provided they be furnished with the papers required by the laws of each country as evidence of the nationality of merchant vessels.

ARTICLE XVII.

Vessels, merchandise, and property, belonging to citizens or subjects of either of the two countries, which may be taken by pirates within the limits of the jurisdiction of one of the two contracting parties, or on the high seas, or which shall be conveyed to a port, river, road, or bay of the other, or found therein, shall be delivered up to their owners on payment, if this shall be demanded, of such expenses for recovery as shall be determined by the competent courts when the ownership shall have been proved before the courts, by an application which must be made within the term of one year by the parties interested or their attorneys, or by the agents of the respective governments.

ARTICLE XVIII.

Vessels of war belonging to one of the two contracting parties may enter, remain, and repair damages in such of the ports of the other as are open to the most favored nation; they shall there be subject to the same rules and enjoy the same advantages as those of the most favored nation.

ARTICLE XIX.

If it shall happen that one of the two contracting parties shall be at war with a third power, the other party shall in no case authorize its citizens to take or accept a commission or letters of marque, to carry on hostile operations against the former, or to disturb the commerce and property of its citizens.

ARTICLE XX.

The two high contracting parties hereby adopt, in their mutual relations, the following principles:

1st. Privateering is abolished.

2d. A neutral flag covers a cargo belonging to the enemy, excepting contraband of war.

3d. Goods belonging to a neutral, with the exception of contraband of war, cannot be taken under a hostile flag.

4th. Blockades, in order to be obligatory, must be effective, that is to say, maintained with a force sufficient really to prevent the enemy from gaining access to the blockaded territory.

It is further agreed that the freedom of the flag also secures that of persons, and that individuals belonging to a hostile power who shall be found on board of a neutral vessel cannot be made prisoners unless they are military men and engaged at the time when taken in the service of the enemy.

The two high contracting parties will apply these principles, as regards other powers, only to those which recognize them in the same manner as they do themselves.

ARTICLE XXI.

In case one of the contracting parties shall be at war, and in case its vessels shall have to exercise the right of search at sea, it is agreed that if they shall meet a vessel belonging to another party which remains neutral, they shall keep out of cannon-shot, and that they may send in their boats only two persons, with power to examine the papers relating to their nationality and cargo.

Commanders shall be responsible for any molestation or act of violence which they may commit or suffer to be committed on such an occasion.

It is further agreed that a neutral party shall in no case be obliged to pass on board of the searching vessel, either in order to exhibit papers or for any other purpose.

Search shall only be permitted in the case of vessels sailing without a convoy. When convoyed, it shall be sufficient for the commander to declare verbally, on his word of honor, that the vessels placed under his protection and that of his force be-

long to the country whose flag they carry, and for him also to declare, when the said vessels are bound to a hostile port, that they carry nothing that is contraband of war.

ARTICLE XXII.

In case any of the two countries shall be at war with any other power, the citizens of the other country may continue their commerce with and navigation to the territory of this same power, excepting such cities or ports as may be really besieged or blockaded; this liberty of commerce and navigation, however, shall in no case be extended to articles which are considered contraband of war, such as fire-arms, side-arms, projectiles, gunpowder, saltpeter, military accoutrements, and all instruments for warlike purposes.

In no case shall a merchant-vessel belonging to citizens of one of the two countries, which has cleared for a port blockaded by the other, be taken, captured, or condemned, unless it shall have been previously notified of the existence of a blockade by some vessel forming part of the blockading squadron or division; and in order that pretended ignorance of the facts may not be alleged, and that a vessel which has been duly notified may be liable to capture, if it shall subsequently appear before the same port, during the existence of the blockade, the commander of the vessel of war which shall first recognize it, shall affix his signature to the papers of such vessel, stating the day, the place or the latitude on or in which he visited it and communicated the aforesaid notification with the formalities required by the same.

ARTICLE XXIII.

Each of the two high contracting parties may establish consulates in the territory and dominions of the other for the protection of their commerce; but these agents shall not enter upon the exercise of their functions, nor shall they enjoy the rights, privileges, and immunities attached to their office, without having previously obtained an "exequatur" from the government of the territory; the latter reserving the right to determine at what places it is expedient for it to permit consuls to reside. It is understood that the government shall apply no restriction in this respect which is not common, in its country, to all nations.

ARTICLE XXIV.

Consuls-general, consuls, vice-consuls, and consular agents, likewise consular pupils, chancellors, and secretaries attached to missions, shall enjoy, in both countries, all privileges, exemptions, and immunities which may be granted, at their places of residence, to the agents of the same rank of the most favored nation.

Consules missi, the citizens of the contracting party appointing them, shall be exempted from having troops quartered in their houses, and from direct taxes, whether personal, mobiliary, or sumptuary, levied by the state or by the municipalities. If, however, such agents shall be merchants, or shall be engaged in any industrial occupation, or shall be the owners of real property, they shall be considered as citizens of the state to which they belong, as regards taxes and contributions in general.

Consules missi, citizens of the contracting party appointing them, shall enjoy personal immunity, and shall not be arrested or imprisoned, save for serious offenses or crimes.

As to consuls who are citizens of the country where they reside, or merchants, their personal immunity shall only be understood to extend to cases of debt or other civil causes not connected with the business carried on by them for their own account or by their employés.

Such agents may place a representation of the arms of their country over the front door of their houses, together with an inscription saying: consulate of ———; they may also raise the flag of their country over the consular building on public or national holidays; but these external signs shall never be considered as affording the right of asylum.

In case of the death, impediment, or absence of consuls-general, consuls, vice-consuls, and consular agents, consular pupils, chancellors, and secretaries shall be considered as fully entitled to transact the business of the consulate *ad interim*.

ARTICLE XXV.

The archives, and, in general, all papers belonging to consulates shall be inviolable, and shall not be taken or examined by the legal authorities under any pretext, or in any case.

ARTICLE XXVI.

The consuls-general and consuls of the two countries shall be at liberty to appoint vice-consuls and consular agents in the various cities, ports, or places of their consular districts, where the good of the service intrusted to them may require it; but in all

such cases, the approval or exequatur of the government of the territory shall be considered a requisite. Such agents may be citizens of either of the two countries or foreigners.

ARTICLE XXVII.

The consuls-general, consuls, vice-consuls, or consular agents of the two countries may, in the case of the death of one of their countrymen without having made a will or appointed testamentary executors:

1st. Place their seals, either in virtue of their office or at the request of the parties interested, upon the movable property and papers of the deceased, informing the proper local magistrate beforehand, that he may be present at this proceeding, and even, if he thinks proper, place his seal by the side of that placed by the consulate, and in such case the two seals shall not be removed save by common consent.

2d. Likewise take an inventory of the property left, in the presence of the proper authorities, if the latter shall think proper.

3d. Cause the movable property belonging to the estate to be sold, according to the custom of the country, when said property may become injured by the lapse of time, or when the consul may consider the sale of the same advantageous to the interests of the heirs of the deceased.

4th. Administer or settle personally, or appoint, on his own responsibility, an agent to administer and settle the said estate, without any interference in these latter proceedings on the part of the local authorities.

It shall, however, be the duty of said consuls to cause the death of any of their countrymen to be announced in one of the newspapers published within their district, and they shall not be at liberty to deliver the property or its proceeds to the legitimate heirs or their attorneys without having previously paid all debts which may have been contracted by the deceased in the country, or until after a year from the time of the announcement of the decease shall have elapsed without any claims having been presented against the estate.

Where there is no consul in the place where the deceased was domiciled, the proper authorities shall, by themselves, perform the same offices as they would perform under similar circumstances in the case of property left by a native of the country. It shall be their duty, however, to notify the nearest consul or consular agent as soon as possible of the decease.

Consuls-general, consuls, vice-consuls, and consular agents shall be considered as guardians of orphans and minors belonging to their country, and in this capacity they shall take all measures which may be required by the welfare of their persons and property, shall manage their property and perform all the duties of guardians, under the responsibility provided for by the laws of their country.

ARTICLE XXVIII.

The consuls-general, consuls, vice-consuls, or consular agents of the two countries shall have the sole charge of the interior police of the merchant-vessels belonging to their country, and the local authorities shall not interfere with this so long as the disorders committed are not of such a nature as to disturb the public tranquillity, either on land or on board of the vessels.

In everything relating to the police of the ports, to the loading and unloading of vessels, to the security of merchandise, property, and effects, the citizens of both countries shall be subject to the laws and statutes of the territory.

ARTICLE XXIX.

The consuls-general, consuls, vice-consuls, and consular agents of the two countries may cause seamen who have deserted from the vessels of their respective countries to be arrested and sent either on board or to their own country. To this effect, they shall address the proper local authorities in writing, and shall furnish evidence, by exhibiting the register of the vessel or the crew-list, or, if the vessel shall have sailed, a copy of said document duly certified by them, that the men claimed formed part of the said crew. On this requisition, thus supported, the surrender of the men shall not be refused to them; all aid and assistance, moreover, shall be furnished to them for the search, apprehension, and arrest of said deserters, who shall be detained and guarded in the prisons of the country, at the request and for the account of the said agents, until these agents shall have found an opportunity to deliver them to some proper person or to send them away. If, however, such an opportunity shall not present itself within the space of three months from the day of the arrest, the deserters shall be set at liberty, and shall not be re-arrested for the same cause.

ARTICLE XXX.

* When no stipulations to the contrary shall have been made among the owners, freighters, and underwriters, the amount of damage which may have been sustained by the vessels of the two countries at sea shall be determined by the consuls-general, consuls,

vice-consuls, or consular agents of their countries, unless the inhabitants of the country where said agents reside are interested in the amount of damage, because in this case it should be fixed by the local authorities, unless an amicable arrangement shall be made between the parties.

ARTICLE XXXI.

When any vessel belonging to the government or the citizens of one of the high contracting parties shall be wrecked or shall run aground on the shore of the other, it shall be the duty of the local authorities to send information of the fact to the consul-general, consul, vice-consul, or consular agent of the district, or, if there be none, to the consul-general, consul, vice-consul, or consular agent whose residence shall be nearest to the place where the accident shall have occurred.

All operations relative to the saving of Salvadorean vessels which may have been wrecked or stranded in the waters of North Germany, shall be performed in accordance with the laws of the country; and, reciprocally, all operations relative to the saving of German vessels which may have been wrecked or stranded in the waters of Salvador, shall likewise be performed in accordance with the laws of the country.

The intervention of the said consular agents shall only take place in the two countries for the purpose of exercising surveillance over operations relative to the repairing, reprovisioning, or, if necessary, the sale of vessels stranded or wrecked upon the coast.

The intervention of the local authorities in any of these cases shall be attended with no expense whatever, excepting that which may be occasioned by the operations of saving and the preservation of saved property; excepting, also, the charges which vessels belonging to natives of the country may be required to pay under similar circumstances.

ARTICLE XXXII.

In case one of the contracting parties shall think that any of the stipulations of the present treaty have been infringed to its prejudice, it shall immediately address a statement of the facts to the other party, together with a demand for reparation, accompanied by the documents and proofs necessary to establish the legitimacy of its complaint; and it shall not authorize acts of reprisal nor commit hostilities until the reparation asked for shall have been denied or arbitrarily delayed.

ARTICLE XXXIII.

The present treaty shall continue in force from the date of the exchange of the ratifications until the 31st day of December, 1877, and if, twelve months previously to the expiration of this term, neither of the two parties shall announce, by an official declaration, its intention to cause the effects of said treaty to cease, it shall remain in force for another year, and so on, until one year shall have elapsed from the date of the aforementioned official declaration.

ARTICLE XXXIV.

The present treaty, consisting of thirty-four articles, shall be ratified, and the ratifications shall be exchanged, at Berlin, within the space of twelve months, or sooner, if possible.

In testimony whereof the plenipotentiaries have signed the present treaty, and have sealed it with their respective seals.

Done in the city of Berlin, in two originals, on the thirteenth day of June, one thousand eight hundred and seventy.

RAFAEL ZALDIVAR,
F. R. DELBRÜCK.

RATIFICATION.

The President of the republic of Salvador to its inhabitants: Know ye, that the chamber of deputies of the republic of Salvador has decreed as follows:

The chamber of deputies of the republic of Salvador.

Whereas the treaty of friendship, commerce, and navigation, concluded between the government of this republic and His Majesty the Emperor of Germany, is advantageous to the interests of the contracting countries, as appears from an examination of it, has seen fit to decree and

Decrees: Only article. The treaty of friendship, commerce, and navigation, concluded between the government of this republic and His Majesty the Emperor of Germany, on the 14th day of June, in the year 1870, is hereby ratified with the modification made by the German Parliament in the 9th article of said treaty in these terms: "In the unfortunate case of a war between the two high contracting parties, both the merchants and other citizens of the one, residing in the territory of the other, without any exception, may continue their residence and the free exercise of their profession

and industry, without being disturbed in any manner, so long as they commit no offense against the laws of the country."

Done in the hall of sessions of the chamber of deputies at San Salvador, March 14, 1872.

Let it be sent to the senate.

DOROTEO VASCONCELOS,
Deputy, President.
MACARIO ARAUJO,
Deputy, Secretary.
MARIANO MORALES,
Deputy, Secretary.

Chamber of senators, San Salvador, March 16, 1872.
To the executive.

JOSÉ SILVA,
Senator, President.
SAMUEL SAN MARTIN,
Senator, Secretary.
ANTONIO GRIMALDI,
Senator, Secretary.

National Palace, San Salvador, March 18, 1872.
Therefore let it be executed.

SANTIAGO GONZALEZ.

In the absence of the minister the chief clerk,

RAFAEL REYES.

CERTIFICATE OF EXCHANGE.

The undersigned have met this day for the purpose of exchanging the ratifications of the treaty of friendship, commerce, and navigation, concluded between the republic of Salvador and Germany on the thirteenth day of June, one thousand eight hundred and seventy, which ratifications have been verified on both sides. At the same time there has been presented to the representative of the German Empire, by the plenipotentiary of Salvador, an official copy of a decree of the legislative assembly of this republic, dated March 14, 1872, interpreting Article IX of said treaty, in the same manner and in the same terms as this article has been interpreted in the instrument of ratification which bears the signature of His Majesty the Emperor of Germany.

The certificates of ratification having been issued in good and due form, the exchange took place.

In testimony whereof the undersigned have issued the present protocol in duplicate.
Done at Berlin, September 19, 1872.

G. KETTENGELL.
DELBRÜCK.

No. 346.

Mr. Biddle to Mr. Fish.

No. 111.]

LEGATION OF THE UNITED STATES,

San Salvador, March 22, 1873. (Received April 21.)

SIR: In my dispatch No. 107, I described the "temblor" of the 4th instant. At two o'clock a. m. of the 19th, a fearful earthquake overwhelmed the whole city of San Salvador and its vicinity.

The dreadful catastrophe, with its startling phenomena, may pardon a digression from the formality of official correspondence to a narrative of personal experience. My family, who had found refuge in the mountains from the alarm of the 4th instant, had returned to the city with the subsiding anxiety. All had continued tranquil, when at about two o'clock on the morning of the 19th I was aroused by a violent earthquake. I hastily dressed and hurried my family to the open air. Although in the dry season, heavy clouds obscured the moon, and the atmosphere was oppressive. These meteorological indications have been frequently noticed at such times. For some fifteen minutes all was still. We were on

the eve of returning to rest when a terrific reverberation, which baffles description, proceeded from subterranean depths, as if the very globe was being rent in twain; the earth swelled and heaved, and split in chasms, and within less time than I can write it the whole city was a chaotic ruin. It came crashing down with dreadful din, and above all arose a maddened yell from the frantic populace, and then there was a dreadful silence, with clouds of stifling dust; then another loud concussion under foot, and another terrible convulsion of the earth, with the crash of buildings and the wild outcry from men and animals.

We were saved as by a special interposition of Providence. In the center of the "patio" or court-yard of my residence is a little orange tree. In the black night this indicated the spot farthest from any falling wall or roof. Here we collected, and clung to its branches, as the surging ground yawned, and closed, and quivered, and shock succeeded shock; thunderings under foot growing louder and yet more awful, and a dreadful concussion distinguishable above all from the simultaneous crash of a falling city. Not only our whole house, furniture, &c., was completely demolished, but the ground had opened and one-half of our garden had slid into the valley below!

This experience was that of all. It seemed as though daylight would never dawn; and at last it disclosed a dreadful scene of devastation—palace, churches, court-houses, warerooms, dwellings of the poor and rich, all suffering one common fate, whilst the avenues to the ruined chapels were thronged with tearful multitudes who knelt in the open air to supplicate Heaven for safety.

Our own preservation seemed almost miraculous; our house a shapeless ruin, and heavy beams and fragments of masonry surrounding us and within two feet of the little tree round which we had rallied as our only sanctuary from inevitable death. I breathed a prayer, silent but fervent, to the Great Being who had preserved us from the dangers of the past night. With the gray of dawn a brave Kentuckian, settled here as a mechanic, Mr. Carter, an insurgent in the rebellion, but now a loyal citizen, scaled the ruined walls to be assured of our safety, and by his side was Mr. Bogen, a noble German sugar-planter, who said that he had ox-carts in the suburbs to carry my young family to a safe asylum at his estate, Monte Christo.

There were many acts of courage and devotion which shone like beacons mid the devastation.

Daylight disclosed the most appalling spectacle—a prosperous mountain city reduced by one mighty blow to shapeless ruin; and this extending to the many neighboring Indian villages, thus differing from destruction by fire, although to heighten the horrors here a whole block was wrapped in flames from the explosion of chemicals. Also, when the first fury of a conflagration is spent, human efforts may arrest its progress, but man is impotent to stay the "temblor," or to divine its career.

The thoroughfares were filled four feet deep with the debris of buildings, and any there must have hopelessly perished. The terrified population poured in swarms to encampments in the open fields.

I promptly visited President Gonzalez, whom I found in a tent pitched in the public plaza. He was calm and energetic, devising means for the general safety and tranquillity. I offered deepest sympathy and any services within my power. He answered with a tear and a pressure of the hand.

Most harrowing is the despair of the poor; very many have lost their all.

Millions will not cover the damages throughout the state; but it is vain at this time to attempt an estimate.

The range of the "terremotos" has been from east to west, and they still continue, but with decreasing frequency and force. Singularly, the neighboring cities of Santa Tecla and Cojutepeque, both on elevations, have entirely escaped.

The President informed me that the seat of government would continue as before, and that efforts would be early made for the restoration of the city.

San Salvador has been repeatedly thus destroyed, last in April, 1854, but the President said never so completely demolished as now. The only buildings standing are a few *frame houses*, the builders and materials for which lately arrived from the United States.

The loss of life has been remarkably small; the President did not compute it at more than twenty-five. This is owing to the warning given by the first and lighter shock, and to the open "patios" or court-yards into which every room in the one-storied structures opens.

I have, &c.,

THOMAS BIDDLE.

No. 347.

Mr. Biddle to Mr. Fish.

No. 113.]

LEGATION OF THE UNITED STATES,
San Salvador, March 24, 1873. (Received April 21.)

SIR: Referring to the subject of my dispatch No. 111, I have the honor to inform you of the arrival, at the port of La Libertad, in this state, of Her Majesty's ship *Reindeer*, Commander W. R. Kennedy.

This officer addressed me a communication, as by inclosure No. 1, generously offering me and my family refuge from existing peril on board of his vessel.

I replied, as by inclosure No. 2, expressing high appreciation of his kind proffer, but stating that as my family were in security at this hour, I felt that duty called me to my post.

Such friendly action as this of Captain Kennedy produces the happiest result, and begets feelings of brotherhood between kindred peoples.

I have, &c.,

THOMAS BIDDLE.

[Inclosure 1.]

Commander Kennedy to Mr. Biddle.

H. M. S. REINDEER.

DEAR SIR: I have just come up here to see if I can be of any use to you or any one. Pray let me know if such is the case. I will take you and your family to Panama if you like.

W. R. KENNEDY,
Commander, Royal Navy.

[Inclosure 2.]

Mr. Biddle to Commander Kennedy.

LEGATION OF THE UNITED STATES,
San Salvador, March 23, 1873.

MY DEAR CAPTAIN: I have received with extreme gratification your hospitable proffer of Her Majesty's ship *Reindeer* as a refuge from the existing peril.

As my family are now sheltered from danger, I believe it to be my duty to remain at my post, but cordially tender to you my grateful thanks for this noble tender of material assistance from a kindred nationality, which my Government will appreciate.

I have, &c.,

THOMAS BIDDLE.

Commander R. W. KENNEDY, R. N.,
H. M. S. *Reindeer*.

No. 348.

Mr. Biddle to Mr. Fish.

No. 116.]

LEGATION OF THE UNITED STATES,
San Salvador, April 4, 1873. (Received May 5.)

SIR: The late national constituent convention, besides the reformed constitution, which was the subject of my dispatch No. 89, has also enacted many secondary laws of importance, viz, those establishing a free press, trial by jury in criminal and libel cases; those regulating martial law and the state of siege; the elections with universal suffrage; the hypothecatory laws, modeled on the German system, adapted to the exigencies of Salvador; public instruction; also a plan for a general codification of all statutes in force since the independence, A. D. 1821, and a modification of article 9 of the railway contract, (as by my dispatch No. 37,) the government now agreeing to pay subsidy proportionately to completion of the road; and lastly a law systematizing the appropriation of private property for great public uses, and the system and measure of the assessment of damages therefor.

I transmit herewith copies of the acts declaratory of the privileges of the press, and regulating the creation of martial law and siege, taken from the "Boletines Oficiales" of the 13th and 27th ultimo. The proclamations of the remaining legislation are not yet promulgated. The law of siege received the executive sanction on the 5th of February last.

After a preamble, reciting that sections 16 of Article 69, and 14 of Article 91, of the constitution, empowers the legislature, and during its recess the executive, to declare the state of siege, and that therefore it becomes necessary to determine the circumstances, the limitations, and the forms therefor, the consequent results, and the authority, time, and manner for raising the same, since experience has shown that the suspension of the usual guarantees, and the indefinite prolongation of that abnormal condition, far from contributing to the sustenance of the constitutional authorities, only occasions loss of prestige, with grave disorders and lamentable misfortunes to the nation, decrees, by Chapter 1, Article 1, that siege may be declared in event of war, offensive or defensive, or of rebellion.

By Article 2 it may be imposed, not only on localities threatened by the enemy, or insurgents, but also to neighboring places, to the headquarters of the army, to fortifications, and to the whole republic if deemed necessary and the peril may be imminent.

By Article 3, the declaration thereof is to be by decree, fixing the date of its commencement, without other limitation than the safety of the republic from the threatened dangers.

Article 4 provides, that when this has been declared by legislative decree, the executive, during the recess, may extend the same to other

places when necessary, always observing the second article of the present law.

By Chapter 2, Article 5, siege being declared, the military authorities shall have cognizance of offenses against the interior and exterior security of the State, those which compromise the peace and independence of the republic, infringements of the laws of nations, and of the constitution, and in a word, to all which affects the public order, whosoever may be their authors, principals, accomplices, or abettors.

By Article 6. When the delinquents belong to the army, the military authorities are to try and punish according to the articles of war, but upon others are to impose the punishments established by the existing penal code.

By Article 7. In either case the sentence must be confirmed by the commanding general of the republic.

Article 8 provides that when this is impracticable, then the general conducting operations, &c., to be consulted.

Article 9 declares that, during siege, the guarantees of *habeas corpus*, free transit, public meetings, and the liberty of the press are suspended.

By Article 10. The guarantees comprised in articles 34, 35, and 41 of the constitution are also suspended. (See dispatch No. 89.)

By Article 11. During siege, the real property of both foreigners and natives may be temporarily occupied, when it may be necessary to establish a fortification or to place troops, in which cases the owner of the land shall be indemnified by the nation so soon as the war has ceased.

Also personal property may be taken when necessary for the service in war, but in this case the government, by the medium of the requisition, shall give a corresponding voucher to the owner, fixing, if possible, the value of the things taken, to the end that the owner, the war over, may recover of the nation.

By Chapter 3, Article 12, it is the exclusive prerogative of the executive to raise siege, who shall do so under the strictest responsibility, by means of a decree, as soon as the causes which impelled it have ceased.

By Article 13. The undue prolongation of the state of siege is deemed a crime against the nation, (*delicto de lesa nacion*), and produces popular action.

By Article 14. The executive must inform the Congress, at its next session, of the arrests and other measures which have been taken in virtue of, and resulting from, the siege, being responsible for abuses, &c.

By Article 15. After the siege has been raised, the military tribunals shall continue jurisdiction of pre-existing cases.

The 16th article repeals former laws upon the subject, &c.

The congressional decree regulating the liberty of the press was signed by the President on the 10th day of February last.

It thus commences: Considering that it is necessary fitly to expound the guarantee prescribed in the 24th article of the existing constitution, and that such abuses as might arise in its exercise should be prevented, specifying them clearly, and designating the penalties to which individuals responsible for them are liable, decrees:

By chapter 1, Article 1. All the inhabitants of Salvador shall have the right to print and publish their thoughts by the press, without previous examination or censorship, but they shall be responsible for abuses committed in its exercise.

By Article 2. This right extends to the introduction and circulation in the republic of every description of books, pamphlets, and papers.

By Article 3. To this is annexed the liberty to examine and criticise

all the official acts of the supreme authorities and of whatsoever public functionary.

Chapter 2 treats of the abuses of the freedom of the press.

By Article 4 these consist—

1st. In offending the public morality.

2d. Inciting to rebellion or to disregard of the established authorities.

3d. Publications injurious to any individual concerning his private conduct.

4th. False accusations of public authorities, &c.

By Article 5 the liberty of the press is not abused in the following cases:

1st. For censure, when the authorities do not comport themselves as they should in the exercise of their functions.

2d. When the accusations against private individuals refer to offenses against the state; but, in such event, the circumstances should be proven.

3. When abuses in religion or morals are criticised for the sake of reforms.

By Chapter 3, Article 6, the printers, publishers, and distributors are responsible.

By Chapter 4, Article 7, registration of the printing-office required, with names of proprietors, employés, &c. Titles of office, places, dates, &c., to be placed upon each publication, &c., under penalty of two hundred dollars, and liability to indictment and further punishment.

Chapter 5, Articles 11, 12, and 13 prescribe the method for procedure by those injured by libels.

By Chapter 6, Article 14, every accusation, relative to these abuses, shall be submitted to a qualified jury composed of seven members.

By Article 15, the selection, number, and qualifications of the jurors, the mode of organizing the tribunal, the formalities to be observed in the procedure, and the points to which the verdict should be limited, shall be settled by the applicable general law.

By Chapter 7, Article 16, all offenses specified in Article 4, and the second section of Article 5, shall be punished by a fine of from fifty to two hundred dollars; and, in Article 17, should the accused be insolvent, he is to be imprisoned one day for every dollar of fine.

By Chapter 8, Article 18, imprisonment for abuses of the press are abolished, and by Article 19 no further exemption is extended.

By Article 20 a law punishing individuals for disrespect to public functionaries is decreed, not to extend to libels of the press.

By Article 21 publishers, printers, and their employés are excused from military services.

By Article 22 all proprietors or directors of printing establishments are strictly obliged to furnish, of all their publications, three copies to the minister of state for the department of the interior, three to the national library, and one to the public treasurer, in places where there is such a functionary, or to the counsellor of municipality, in the capital of the department not having such treasurer, &c.

By Article 24 prior inconsistent statutes are repealed.

I have, &c.,

THOMAS BIDDLE.

No. 349.*

Mr. Biddle to Mr. Fish.

No. 120.]

LEGATION OF THE UNITED STATES,
San Salvador, April 10, 1873. (Received May 5.)

SIR: Referring to my dispatch No. 111, I have the honor to inform you that the late earthquakes have sensibly diminished, both in force and frequency, and it is hoped that there may soon be an entire cessation.

None of the inhabitants have other shelter than that of tents or temporary shanties, and, as the rainy season is making an early approach, many anticipate epidemic fevers from the continued exposure and excitement.

Santa Secla, a neighboring city, about eight miles distant, and some seven hundred feet higher than San Salvador, seems to rest on a firmer foundation, for its buildings have been but slightly disturbed, and many refugees have found shelter there, not only in the dwellings, but in temporary sheds erected in the open squares.

The same exemption from injury in this locality was observed during the earthquakes of 1854. Hence a large body of the population favor the transfer of the capital to this city, but I have not heard that the governmental resolve to construct anew San Salvador has been reconsidered.

It is worthy of observation that while all buildings of brick, adobe, stone, plaster, &c., have been utterly demolished, the few light frame houses remain unscathed, and will greatly influence the character of future structures.

Prices of food, furniture, and of all necessary articles have risen greatly, and a monetary distress is apprehended.

The general financial prospects have for some time been precarious, and the late "temblores" have checked the pursuits of the metropolis and vicinity, not to speak of the actual agriculture.

The peace has been admirably maintained, and President Gonzalez has received many encomiums for his successful efforts to this end.

Alluding to the late commotions in Guatemala, he assured me that they consisted now of only a few guerilla bands, who lurked in the fastnesses of its mountains, and that all really organized insurgents had been dispersed; that the trifling difficulties in Honduras were subsiding to rest; and that there were no indications that enemies abroad or at home would avail themselves of the present confusion to disturb the peace of Salvador. But news has since been received of the arrival at San José de Costa Rica, en route to their native land from foreign asylum, of ex-President Cerna, ex-Minister Enrique Palacios, and other leaders of the reactionary party in Guatemala, who may there fan into a fierce blaze the dying embers of revolt, and involve Salvador in the general conflagration.

I have, &c.

THOMAS BIDDLE.

No. 350.

Mr. Biddle to Mr. Fish.

No. 121.]

LEGATION OF THE UNITED STATES,
San Salvador, April 15, 1873. (Received May 20.)

SIR: Referring to my dispatch No. 116, I have now the honor to present a copy and synopsis of the law regulating trials by jury, approved the 10th day of March last.

After a brief preamble alluding to Article 114 of the constitution creating the system, in cases of grave offenses against the person and property, and in the exercise of the liberty of the press, it decrees, by Chapter 1, Article 1, that to be a jurymen one must have passed thirty years of age, be in the full enjoyment of civil and political rights, know how to read and write, and bear a good character.

By Article 2 these qualifications are to be established before a committee of five reputable persons.

By Article 3 of these, the executive to nominate three and the judiciary two, in each of the departments of the republic.

By Article 4 this committee is to meet annually, on the third Sunday in December, but for present purposes three days after notification.

By Article 5 the committee to make these lists from the official register, &c.

By Article 6 three copies of the names of the qualified citizens to be made, one to be sent to the minister of justice, another to the supreme court, and the last to the judge of the first instance, at the capital of the department. These should express names and residences.

By Article 7 all such citizens are eligible as jurors.

Articles 8, 9, and 10 provide for correction of errors committed by the said committee in the exclusion of aggrieved citizens.

Article 11 excepts from the jury list civil, military, and ecclesiastical officials, the last of all denominations.

By Article 12 no citizen can be jurymen in a case wherein he may have acted as police, witness, interpreter, expert, or party.

By Article 13 sufficient excuses from serving are: 1st. Public employment without compensation; 2d. Chronic ill-health; 3d. Being beyond seventy years of age; 4th. Great poverty, so as not to be able to abandon daily toil without great prejudice.

By chapter 2, Article 14, cases of grave crimes against the person and property, so designated in the penal code, and abuses of the liberty of the press are to be tried by jury.

By chapter 3, Article 15, the judge conducting these trials shall be that of the court of first instance of the district wherein the offense was committed.

Article 16 provides that this is not to exclude the usual preliminary action by justices of the peace, &c.

By Article 17 so soon as the judge has notice of the commission of a crime proper for jury trial, he is promptly to collect facts, view premises, and minutely to note every circumstance calculated to throw light upon the affair, under a penalty of ten dollars, &c.

By Article 18 the committing magistrate and the judge are to act in concert conformably to the penal code, solely abstaining from issuing writs for permanent imprisonment, discontinuance, or excarceration, (*el auto de prision permanente, el de sobreseimiento, y el de excarceracion.*)

By Article 19 the judge must have the compendium prepared at latest within thirty days, under a fine of one dollar for each day's delay thereafter, &c.

Article 20 provides that legal counsel are to be supplied the prisoner, &c.

By Article 21 six days' notice of these preliminaries are to be given to the fiscal or syndicate, and to the counsel for the defense, that proofs and allegations may be prepared.

By Article 22, in libel cases, the judge shall initiate process against the printing office, and shall cite the publisher, who may present the

original article signed by its author, or person guaranteeing the same, in which event after procedures shall be had against the original writer.

By Article 23 a day is now to be fixed by the judge for the drawing of lots for the jury.

By chapter 4, Article 24, the time having come, the judge, in the presence of the culprit and his counsel and of the prosecutor and syndicate, shall deposit in a sack, on equal scrolls, the names of the jurors contained in the list referred to in article 6.

By Article 25 the omission of any of their names at the time of casting lots vitiates the whole.

By Article 26 ballots are then to be drawn for nine jurors, and five supplementary ones to form the tribunal.

By Article 27 each party in the balloting can peremptorily challenge five jurors, &c.

By Article 28 the joint number of prosecutors or of defendants shall be considered as one person for the purpose of peremptory challenges, &c.

By Article 29 the above formalities having been executed, a formal statement thereof shall be signed by the judge and the parties, if they can write, certified by the notary public or secretary.

By Article 30 the judge is immediately to issue an order directing that the jurors selected be cited, designating the place, day, and hour for assembling.

By Article 31 the jurors shall be cited through written and timely notices.

By Article 32 each delinquent juror shall be fined ten dollars for the first offense, twenty for the second, and fifty for the third. The fine to be imposed summarily and applied to the national treasury.

By Article 33 the fine can only be remitted by justification within the third day of unavoidable prevention, independent of volition.

By Article 34, in the event that one of the jury be detained, or may have been legally challenged, shall have died, or may not have assembled, he shall be re-emplaced by the supplementaries, according to the order in which they were designated by lot.

By Article 35, the jury having assembled to the number of nine, they shall proceed to elect from themselves a president and vice-president.

By Article 36 the notary or secretary of the judge shall act as secretary of the tribunal.

By Article 37, the court thus organized, the following oath is to be administered by the judge: "You do swear and promise before God and before men to examine with the most scrupulous care the charges which are preferred against N. N.; not to betray neither the interests of the accused nor those of the society which arraigns him; that you will not communicate with any individual until the rendition of your verdict; that you will not be influenced by hatred, by antipathy, by calumny, by fear, nor by affection; that you will determine according to the weight of evidence, following your conscience and conviction, with the impartiality and firmness which becomes a man, honorable and free."

Each one of the jurors, commencing with the president, called individually by the judge, shall reply, raising the hand, "I swear it."

By Article 38, thereupon the judge shall withdraw, and the president, occupying the post of honor, shall declare in a loud and measured voice that the trials (debates) are opened.

By Chapter 5, Article 39, at the commencement of the trials the culprit should be present in the prisoner's dock, in due custody, with his

counsel, and the prosecuting officer or syndicate, all having been cited by the judge.

By Article 40 the trials shall commence (which shall be public) by the reading of the process, which the secretary shall make with the greatest deliberation and clearness possible, to the end that the jurors may form an exact judgment of the facts therein contained.

By Article 41, the reading concluded, which may be repeated at the request of the president or of any other of the jury, the examination of the accused shall be proceeded with anew if the tribunal deems it convenient.

By Article 42 the president, as well as the other jurymen, may address questions to the accused which they may deem necessary for the better elucidation of truth. Also, through the medium of the judge, they may summons the witnesses and experts already examined, to interrogate them anew, extend their testimony, or confront them with each other or with the defendant, for which purpose the judge shall have cited them beforehand.

By Article 43, if the prosecuting attorney or the accused may have new witnesses to present, they shall be examined separately, without being allowed to communicate with each other, and a previous oath shall be administered to them by the president, in these words: "You do swear before God and men to declare, without fear or favor, the truth, and nothing but the truth, concerning such facts as you shall be questioned."

By Article 44 the accused or his counsel may make such objections and observations as they may deem convenient regarding the depositions of the witnesses, but with due moderation, and without interrupting the deponent in the act of declaration; and to that end at the commencement of the trial he should make this intimation: "Neither you (the accused) nor you (the counsel) should say anything against your conscience, nor without the respect due to the laws, and you should express yourselves with decency and moderation."

By Article 45 the president, in his own capacity or through the judge, may compel a reluctant witness to appear, or one who refuses to testify.

By Article 46, when a witness does not speak the Spanish an interpreter is to be used, &c.

By Article 47 every incident which may arise during the procedures, such as the hinderance or refusal of any of the jurors, insubordination of any witness, &c., shall be determined by the judge without necessarily interrupting the trial.

By Article 48, the examination of the new witnesses being concluded, the attorney-general, or whoever is acting in his stead, should read his statement of the case (*alegato*), which should be succinctly framed, stating that he accuses N. of having committed such an offense, under such and such circumstances. Thereupon the defense of the culprit is read.

By Article 49 replications by either side may be made, after which the president shall declare in a loud voice, "The trial is ended," (*terminados los debates*.)

By Article 50, the procedures closed, the court-room shall be cleared, the culprit returned to his prison under the usual custody, and the judge shall have charge of the court-room, so that the jury may deliberate without communicating with others outside and without leaving the room until the rendition of a verdict.

By Article 51 the secretary shall record in the process the whole procedure of the trial with the greatest possible accuracy.

By Article 52, when the jury are alone in order to commence their deliberation, the president shall make to them the following intimation, which should be printed in large characters in the court-room, (*salon de los debates* :) "The law does not exact account from juries of the means through which they have reached their conviction; the law does not prescribe for them the rules by which they are to determine the establishment and sufficiency of a proof; it prescribes to them to interrogate themselves in silence and abstraction, and to seek in the sincerity of their conscience what impression has been made upon their reason by the proofs adduced, both for and against the accused. The law does not say to them, you shall take as truth such a fact, verified by a certain number of witnesses; it asks but one question, which girdles the whole range of their duties, 'have you a strong conviction?'"

By Article 53, juries shall deliberate concerning the principal fact, and afterward of all its accessories.

By Article 54 the trial, once commenced, shall be uninterruptedly continued until the pronunciation of the verdict.

By Chapter 6, Article 55, the deliberations of the jurors having closed, the president shall propound to them, in their order, the following questions:

1. Is the accused guilty of the commission of such a crime? (Naming it.)
2. Has the accused committed the crime under such and such circumstances? (Those comprised in the accusation or in the final statement of the prosecuting officer.)
3. Has the accused committed the offense under these or those circumstances? (This question is only to be put when in the course of trial circumstances have developed not contained in the accusation.)
4. Does such a fact appear proved? (This question is only to be asked when the accused has plead by way of excuse a fact admitted as sufficient by the law.)
5. Has the accused acted with understanding in the perpetration of the crime? (This question is to be asked by the president whenever the culprit may be less than fifteen and older than eight years of age.)
6. Is such printing abusive of the liberty of the press? (This question should be the first in libel cases.)

By Article 56 the answers to the above questions are given in secret examination.

By Article 57 the decision of the jury, be it in favor of or against the accused, shall be determined by the absolute majority of the votes.

By Article 58 there shall not be expressed in the verdict the number of votes which form the majority, and much less the names of those voting.

By Article 59, after having given in their votes, the jury shall re-occupy their seats, and the president, standing and placing his hand upon his heart, shall say: "Upon my honor and my conscience, before God, and before men, I declare that the verdict of the jury is: Yes, the accused, &c.; or, No, the accused, &c."

By Article 60 the verdict shall be signed by the president and secretary, and be remitted, jointly, with the process and the record of the trial, to the judge.

By Article 61, if the verdict has been absolvatory of the accused, the judge shall issue a writ declaring him free from the charge, and directing that he be placed in actual liberty, if he be detained for no other reason. This writ, as well as the verdict, shall be notified to the parties.

By Article 62 one thus acquitted cannot be again tried for the same act.

By Article 63, if the accused has been found guilty by the verdict, the judge shall inform the parties thereof, and emit the order for imprisonment, &c., without appeal.

By Article 64, within the third day after the making of the notification, as by the preceding article, the prosecuting officer shall ask of the judge the application of the public penalty and the personal indemnification. The judge shall give hearing to the defendant and his counsel concerning this petition for three days.

By Article 65 neither the accused nor his counsel can allege in their contestation that the facts are false, since the verdict has foreclosed that manner of defense; but if they can maintain that the act or acts are not crimes under the law, that the punishment asked by the prosecutor is greater than the offense deserves, that there is no obligation to pay pecuniary indemnifications, &c.

By Article 66, the parties being heard, the judge, within twenty-four hours following, shall assemble the parties and pronounce sentence conformably to right.

By Article 67 the judge's sentence should conform to the general distributions.

By Article 68, from the verdict of the jury no recourse can be had, save under the plea of nullity before the court of the second instance.

By Article 69 there is only nullity in the verdict of a jury in the following cases:

1st. For the omission to place in the wheel (*insacular*) for the judge one or more of the names on the list which comprises the jurors selectable.

2d. When the jurors have not taken the oath prescribed by law.

3d. When the jurors have communicated with outside persons before verdict.

4th. When the defendant has been deprived of legitimate modes of defense.

5th. When any of the jurors is incapable to act according to Article 1 of this law.

6th. When the verdict extends to other points which may not be included in the questions of Article 55; and

7th. When five votes do not unite for the verdict—the necessary number.

By Article 70, in case of the verdict being declared void by the chamber of the second instance, the judge will cite anew the parties before whom he will verify the names of the selectable jurors, omitting only those whose verdict was declared void, and the same process as before shall be continued, as if nothing had been done.

By Article 71, from the decisions of the judge all ordinary and extraordinary recourses are admitted which the law permits, recourses which are sustained with the same limits prescribed by the criminal code for the other causes not subjected to the jury system.

By Chapter 7, Article 72, when the present law is defective in regard to some procedures, or has not provided the mode of settling some contingencies, the judge shall conform to the dispositions of the codes in force.

By Article 73, in places where there is no prosecuting attorney (*fiscal*) the municipal syndicate shall act as such.

By Article 74, when a cause has been initiated by the judge of first instance, he not being of the capital of the department, he will remit to

the judge there, so soon as he has finished the summary, the accused, with a requisition so that he may conduct the further proceedings until the jury pronounces its verdict, and then the case is to be returned to the judge making the requisition.

By Article 75, when in the capital of the department there may be two judges of the first instance, the senior judge shall act unless legally prevented.

By Article 76, all the procedures in these trials shall be written on white paper, and the costs, upon condemnatory sentence, shall be paid in the same form as in other criminal causes.

By Article 77, when the verdict is absolatory, although the plea of nullity should be interposed, it will still be executed by the judge, the accused being only held to bail, while the court of second instance decides as to the nullity.

By Article 78, all criminal jury cases pending before the court of first instance at the time of the publication of the present law, not having been finally disposed of, will be submitted to the jury system established by this law.

By the 79th Article, in the secret balloting referred to in Article 59 each juror will receive two tablets, on one written Yes, and on the other No. On voting each juror will deposit in its receptacle the tablet which in his conscience answers to the question asked. The remaining tablet after the balloting will be placed in the bag with similar precaution.

By Article 80, the balloting over, the president, with his secretary, and in the presence of the other jurors, will proceed to the inspection of the votes.

By Article 81, if the offense is for the abuse of the liberty of the press without meriting official procedure, all process will be made through the private prosecutor.

By Article 82, whatever be the nature of the offense for which official procedure is instituted, the accuser's legal representatives or relatives have the right to co-operate in the accusation, forming one party with the prosecuting attorney.

Article 83 suppresses certain expressions in the 14th Article of the law for the press.

By Article 84, if some of the proofs in the summary should be rejected as null before the jury for the non-observance of the required formalities by the code, and if they cannot be rectified immediately, they may yet be considered by the jury.

By the 85th all laws inconsistent herewith are repealed.

Thus has Salvador been the first of the states of Central America to introduce into her jurisprudence trial by jury, although it is limited to prosecutions for public wrongs and to cases involving the liberty of the press.

The law above sketched has its peculiar features—a jury with president, vice-president, and secretary, composed of nine members, of whose votes a majority only being necessary to a verdict.

The principle of the common law that in criminal and libel cases juries are the judges both of law and facts, seems to be pretty well interwoven with this statute, and its main features correspond with those of the great system which has satisfactorily dispensed justice to so many millions from the days of Alfred to this hour.

I have, &c.,

THOMAS BIDDLE.

No. 351.

Mr. Biddle to Mr. Fish.

No. 127.]

LEGATION OF THE UNITED STATES,
San Salvador, April 29, 1873. (Received June 9.)

SIR: I have the honor to transmit herewith a copy of regulations for the military organization of the republic, promulgated by President Gonzalez on the 21st instant, and based on Articles 122 and 124 of the recent constitution.

It prescribes that all the Salvadorean males from eighteen to fifty years of age shall be subject to military duty, excepting those lawfully married or being only sons in families, or the sole support from the death or advanced age of the father; the being a widower with children to maintain; also clergymen, schoolmasters, public employés, medical men, surgeons, and apothecaries, but the last may be taken to serve professionally.

From the total of these, six thousand soldiers are to be selected by lot, thus placing on an equal basis the whole community, prescribing the term of enlistment and allowing a moneyed commutation therefor, and generally establishing a system of recruiting for the army.

I have, &c.,

THOMAS BIDDLE.

No. 352.

Mr. Biddle to Mr. Fish.

No. 129.]

LEGATION OF THE UNITED STATES,
San Salvador, May 1, 1873. (Received June 9.)

SIR: I have the honor to transmit to you herewith an official copy of a "memorial," presented to the national constituent assembly by the acting minister for foreign affairs, the Licentiate Don Manuel Caceres, dated the 3d of February last.

It succinctly presents the existing relations between Salvador and other nations, stating that, the republic having observed all the laws of nations and treaty obligations, that the most perfect peace and friendship exists with all countries, and that new treaties have been negotiated to strengthen these bonds and to promote the general prosperity.

That the best relations exist with the other Central American republics; and after specifying the cordial understanding with the governments of Guatemala, Honduras, Nicaragua, and Costa Rica, and being especially congratulatory upon the liberal policy of the states of Honduras and Guatemala, thus proceeds:

"The accord which exists between the five republics is an indication that at no distant epoch the great idea of a national union may be realized."

The paper alludes to the "circular of the United States of Colombia in favor of the Cuban patriots, who with equal perseverance and heroism strive to conquer their independence," and expresses the cordial concurrence of the Salvadorean government with the proposition.

The document concludes with a summary of the satisfactory condition of their foreign relations, and of the organization of their diplomatic and consular corps.

I have, &c.,

THOMAS BIDDLE.

No. 353.

Mr. Biddle to Mr. Fish.

No. 132.]

LEGATION OF THE UNITED STATES,

San Salvador, May 24, 1873. (Received June 26.)

SIR: The earthquakes had gradually subsided since the 19th of March, when a severe shock on the 22d instant has warned the community of continued peril.

The rains are backward, and should the coming maize crop, the great staple, be affected, serious inconvenience will ensue.

The monetary condition remains unchanged. A financial agent dispatched to Europe by this government to negotiate a loan, and also for subscriptions to the stock of a bank, as by my No. 87, has not as yet accomplished his mission.

The railway mentioned in my No. 37 is still in its inception, the contractor expressing confidence in its due completion.

Meantime General Rufino Barrios has been elected president of Guatemala, receiving six thousand votes against fifteen hundred for Miguel Garcia Granados.

That state was then declared in siege, and a proclamation issued allowing the reactionary insurgents one month within which to disperse.

General Barrios next wrote a request to President Gonzalez, of Salvador, as the ally of Guatemala, for a personal interview, and they are holding a conference at the city of Santa Ana, in this republic.

The purport of the council is thought to be plans for the maintenance of both administrations. The internal peace of Salvador continues, but the discords among her neighbors are contagious, and there are whisperings of growing dissatisfaction.

The Jesuit fathers in Asylum, in Nicaragua, are wakeful enemies, and the reactionary spirit is active in the allied states of Honduras and Guatemala, and even here a muffled but portentous agitation is maintained unfavorable to protracted tranquillity.

The government, however, expresses confidence in its own stability. President Gonzalez has military prestige and admitted courage, and peace alone, with agricultural increase, can replace the drains which have so severely depleted Salvador.

We may hope that for once the history of Central America may not here repeat itself, with insurrection and revolution as unforeseen and swift as the earthquakes, but that the toils of a patriotic president may inure to peace and progress.

I have, &c.,

THOMAS BIDDLE.

No. 354.

Mr. Biddle to Mr. Fish.

No. 134.]

LEGATION OF THE UNITED STATES,

San Salvador, June 9, 1873. (Received July 17.)

SIR: I have the honor to transmit to you herewith a copy of a statement of four intelligent emigrants hither, an American, a Scotchman, and two Germans, upon the agricultural capability of the valley of the

volcano of Santa Tecla, in the vicinity of the city of San Salvador, after the results of a year's experiments.

It is believed that this yield in sugar and grasses will compare favorably with the statistics from any part of the tropics, and the accompanying statement is that of settlers who admit a rich reward for their labors.

It proves also the possibility of successful white farming in this climate, and the substantial prosperity which may dawn upon Central America, notwithstanding the "temblores," when wars may cease and the arts of peace prevail.

I have, &c.,

THOMAS BIDDLE.

[Inclosure.]

Statement showing the actual yield of four manzanas of cane, as ascertained from the weight taken under the inspection of the undersigned at Monte Christo, said cane having been grown on the lands known by the name of Merliot, and taken into account as the amount allotted to each of the undersigned for their crop of the present year :

Four manzanas of cane yielded 8,487.32 quintals of 100 pounds each, or 2,121.83 quintals to each manzana, having 100 Spanish yards square, and is equal to one and seven-eighths of one acre.

STA. SECLA, June, 1873.

Statement showing the annual prospective returns from eight manzanas of land, that being the amount purchased by each of the undersigned of the property known as San Benito :

4 manzanas of cane, say 8,487.32 quintals, at 20 cents per quintal.....	\$1,697 46
1 extra-manzana at above yield	424 37
1 manzana, grass value	78 00
The remaining two manzanas planted with corn, vegetables, or anything else of a marketable nature, it is estimated will yield at the value of.....	100 00

Total estimate yield of 8 manzanas for one year.....	2,296 83
Less allowance for any drawback, even in case that the yield of the cane should be reduced to fifteen hundred quintals the manzana, which we estimate to be the lowest, we make the deduction of.....	650 00

Thus giving the total net yield from 8 manzanas of land per annum. 1,646 83

We further state that four head of cattle can be properly fed from the yield of one manzana of grass; that the climate is favorable, and vegetables of all kinds can be raised with much success and find a ready market. A family consisting of children grown up and able to perform field labor can successfully manage the work, attending the cultivation of eight manzanas of land; but without children the settler will require the assistance of one hired hand during the harvest time; but in the case of those settlers residing within the circle of one mile of the factory, the settler can perform the work by himself.

JOB B. CAVARIS.
HENRY P. WERICH.
E. H. SMITH.
ROBERT JESSE.

No. 355.

Mr. Biddle to Mr. Fish.

No. 140.]

LEGATION OF THE UNITED STATES,
San Salvador, June 30, 1873. (Received July 26.)

SIR: Referring to your instruction No. 55, I have the honor to inform you that pursuant thereto I requested an audience with President Gon-

zalez, through the minister of foreign relations, for the purpose of presenting my letter of recall, and that of this date the same was duly delivered, with a brief address, which was kindly received, as by the accompaniment hereto.

The president showered upon me every manifestation of cordial good will, sending his private carriage to conduct me to and from the ceremony, and at its conclusion he tendered me a public banquet as a mark of his personal regard.

He is an enthusiastic admirer of President Grant, and spoke of him with the blunt frankness of a brave soldier.

I shall leave for the United States by the earliest opportunity, and avail myself of this occasion to express to you, and to all connected with the Department of State, my grateful obligations for the unvarying courtesy and kindness of which I have been the recipient.

I have, &c.,

THOMAS BIDDLE.

[Inclosure 1.]

Mr. Biddle to Mr. Castillo.

LEGATION OF THE UNITED STATES,
San Salvador, June 24, 1873.

SEÑOR MINISTER: I have the honor to communicate to you herewith an office copy of a letter from the President of the United States, addressed to President Gonzalez of Salvador, relative to my return to my country, and expressive of his sincere desire to strengthen and extend the friendly intercourse now happily subsisting between the two governments, and to secure to the people of both countries a continuance of the benefits resulting from that intercourse, and to request the appointment of a time and place at which I may have audience with the president for the purpose of presenting the original in person.

I avail myself of this occasion to express to you, señor minister, the very high consideration with which I have the honor to subscribe myself,

Your obedient servant,

THOMAS BIDDLE.

[Inclosure 2.—Translation.]

Mr. Castillo to Mr. Biddle.

MINISTRY OF FOREIGN RELATIONS OF SALVADOR, *June 26, 1873.*

SIR: I have had the honor to receive your polite dispatch dated the 24th instant, accompanying the autographic letter addressed by the President of the United States to the president of this republic, upon the occasion of your return to your native country.

The marshal president, without prejudice to the reply which he may make when he receives the original letter from your hands, has instructed me to declare here that the kindly sentiments expressed by General Grant toward the Salvadorean government and people correspond with the enthusiastic sympathy and admiration of Salvador and its government for the great American nation, and to the illustrious chief who now guides its destinies, and to an ardent desire to strengthen and extend more and more the friendly and sincere relations which so happily exist between both governments.

The marshal president has designated for the audience of leave which you have requested 1 o'clock on the last day of the present month in the reception room of the provisional palace.

I hope that this selection may be convenient and acceptable to you.

With the assurances of the very highest appreciation and consideration,

I have, &c.

FABIO CASTILLO.

[Inclosure 3.]

Memorandum of address of Mr. Biddle to President Gonzalez.

SEÑOR PRESIDENT: I have the honor to present a letter addressed to you by the President of the United States upon the occasion of my return to my country.

In taking leave, I desire to express my grateful appreciation of the constant and unvarying kindness and consideration, both in official and personal relations, which I have experienced from you, and it affords me gratification to be the medium of conveying the assurance of the sincere desire of President Grant to strengthen and extend the friendly intercourse now happily subsisting between the two governments, and to secure to the people of both countries a continuance of the benefits resulting from that intercourse.

Praying that peace may long continue to shed its blessings upon Salvador, and that its growing material prosperity may reward your energy and patriotic guidance, I can invoke for this fertile state no greater blessing than that in religion, liberty, peace, happiness, and wealth it may ever merit its Indian appellation, "Cuzcatlan"—the land of plenty.

[Inclosure 4.—Translation.]

Reply of the President of the republic to the farewell address of the Minister of the United States.

MR. MINISTER: Your kind expressions in taking leave to return to your country have created in me feelings of the most grateful satisfaction.

Truly you must be convinced of the esteem and appreciation which the government and the Salvadoreans in general have demonstrated for you.

These sentiments are based upon the propriety with which you have fulfilled your diplomatic duties, and the great personal gifts which adorn you.

My government, enthusiastic on account of the power and progress of the illustrious American people, and interpreting the wishes of Salvador, has ever striven and desires for the future to strengthen the friendly relations and cordial understanding which happily exist with that of the American Union.

With regard to yourself, Mr. Minister, not only have you afforded us the satisfaction to treat officially with a diplomatist of exquisite tact, but also the agreeable pleasure to have in our society a thorough gentleman of so great culture in his private relations.

Therefore I have sorrow at your departure, and I can assure you that both in the government and people of Salvador you will leave many friends who will wish your prosperity.

When returning to your country, I beg that you may be the honorable means of communication to your Government of my sincere and fervent prayers that Providence may ever reward as signally as hitherto the noble aspirations of the American nation.

XXIX.—SPAIN.

No. 356.

General Sickles to Mr. Fish.

No. 476.]

UNITED STATES LEGATION IN SPAIN,
Madrid, November 24, 1872. (Received December 11.)

SIR: Last Thursday evening the minister of state, who had met Admiral Alden and suite at dinner at the legation, expressed a wish to see me at the palace on the following day, intimating that he would have a good deal to say. Deeming the opportunity favorable for the communication of the views expressed in your instruction 270, received that day, I put the document in my pocket and repaired to the ministry at the appointed hour. I have already informed you by telegraph of the prin-

cial results of the conference, and I now confirm the text of my cable message, forwarded in my No. 474 of this date.

Mr. Martos began by an allusion to dispatches received from Admiral Polo, and asked me whether Mr. Merelo had shown them to me. I replied he had read to me one or two passages only, but that I had received from you an instruction of the same date, probably embodying some of the views you had orally presented to the Spanish minister, and therefore I was not surprised to learn that his excellency attributed so much gravity to the present aspect of the relations between the two countries.

Mr. Martos stated that he would regret to see on the part of the United States Government any departure from the friendly course that had hitherto marked all its action with reference to the situation of the Spanish-American provinces; that this cabinet proposed, as I well knew, to proceed with the colonial reforms it had under consideration, and that anything like a hostile demonstration coming from the United States at this moment would greatly embarrass Spain by depriving her concessions of that spontaneous character so essential to her independence and dignity.

I assured the minister that while the President would never be unmindful of the traditions which recalled to us the friendship of Spain in our struggle for independence, nor wanting in due regard to the sensibilities of a great nation, nevertheless this cabinet could not fail to appreciate the reasons constraining the United States Government to insist on a proper consideration of representations it had so often been impelled to make in deference to interests and duties it could not disregard.

I then proceeded to recapitulate some of the principal arguments set forth in your instruction 270, and to which, I remarked, I might again have occasion to invite the attention of his excellency. I emphasized the fact that four millions of the same race as those now held in slavery in Cuba and Porto Rico had become citizens of the United States, enjoying all civil and political rights, and forming an element of popular opinion having peculiar claims to respect in relation to a question touching so large a number of colored people dwelling almost within sight of our southern boundary; and in reply to an allusion the minister made to President Lincoln's message proposing a scheme of gradual emancipation, which would not become effective until the end of the present century, I showed that Congress did not accept the suggestion, and initiated the constitutional amendment of 1865, by which, with the sanction of three-fourths of all the States, slavery was abolished immediately and without indemnity; and I pointed out that emancipation in the United States was not, as was sometimes said, a war measure, since comparatively few slaves could avail themselves of the proclamation of 1863, and that, in fact, slavery was abolished in the United States by a solemn political act, without any pressure of military necessity.

Mr. Martos stated that the cabinet had already decided on a line of action embracing much of the ground we had gone over, and he proceeded to give me in detail the resolutions adopted in council. Kindly acceding to my request, the minister wrote and placed in my hands a note of the main features embraced in his statement. Observing that the measures spoken of were confined in their operation to Porto Rico, I asked whether it was intended to carry out the same policy in Cuba, whereupon his excellency added the concluding paragraph of the memorandum herewith inclosed for your perusal, the substance of which is embodied in my telegram of yesterday.

We then passed to the topic of the embargoed estates in their rela-

tions to the decree of August 31. His excellency seemed surprised to learn that the colonial office had regarded the decree as affecting the claims of American citizens who had sought or who might seek the restoration of their property through the direct intervention of their government, or by means of the jurisdiction of the mixed commission sitting in Washington. I reminded the minister that he had himself sanctioned that view in a communication he had recently addressed to me in the case of Mr. Ramon Martinez Hernandez, a translation of which had been duly forwarded to you; that it was not without surprise I had seen this construction of a measure I had understood to be designed only to place these proceedings, in so far as they affected Spanish subjects, or the citizens or subjects of foreign powers not protected by express treaty stipulations, under the safeguard of the judicial tribunals; believing that, as to citizens of the United States, they had the right, under the seventh article of the treaty of 1795 and the regulations for its execution provided in the convention of February 12, 1871, to demand the restoration of their property, with proper indemnity for its detention, either through the direct action of their government or at the hands of the joint commission now sitting in Washington, without the necessity for any appeal to the jurisdiction of the board created by the decree of August last, and without the intervention of the Cuban authorities, except to execute the proper judgment or order in the premises.

His excellency expressed his entire concurrence in these views, and immediately sent for Mr. Millan y Caro, one of the principal officers of the ministry of state, and instructed him to draft a communication in that sense, to be sent at once to the colonial office and to the Spanish legation at Washington.

Recurring to the slavery question, I appealed to the minister to use his great influence in the cabinet so as to turn the scale in favor of immediate emancipation.

Supporting my views by illustrations drawn from our experience in the southern States, where free labor had shown such satisfactory results, I cited the example of Jamaica to confirm the objections to a system of qualified servitude. Mr. Martos said he preferred immediate emancipation as the safer policy, and would endeavor to prevail on his colleagues to accept that solution; that I must not, however, lose sight of the powerful influences, both Spanish and colonial, operating against speedy action on this difficult and delicate question; that the manufacturing and agricultural provinces were apprehensive they would lose their profitable trade with the colonies if their means of production were crippled; that, at all events, I might feel assured the interval would not be long—not near as long as that proposed by President Lincoln—before slavery ceased to exist in Spanish America.

I am, &c.,

D. E. SICKLES.

[Translation.]

Resolutions adopted.

A civil government shall be substituted for a military one, and for this purpose a civilian of high standing shall be appointed governor of the island of Porto Rico, the functions of the captain general being confined to matters of a purely military character.

A decree shall be issued establishing, with such modifications as may be indispensable, the Spanish municipal law in the island of Porto Rico, in accordance with which free municipal governments shall be elected.

The law in relation to provincial legislatures (the establishment of which law has already been ordered) shall be fully enforced in the island of Porto Rico.

Slavery shall be abolished in the island of Porto Rico, the present state of the question being that the principle of abolition has been granted, the matter now under discussion being whether the abolition shall be immediate or gradual.

The latter shall be done by means of a law which is to be submitted to the Cortes.

These reforms, which are the fulfillment of the engagements contracted by the radical party with the public opinion of Spain, shall be immediately introduced in Porto Rico, since the present state of peace prevailing in that island renders this feasible, and in so doing the radical party shows what will be its policy in Cuba as soon as the pacification of the latter island shall have been accomplished.

No. 357.

General Sickles to Mr. Fish.

No. 477.]

UNITED STATES LEGATION IN SPAIN,
Madrid, November 24, 1872. (Received December 11.)

SIR: Among the acts recently passed by the Spanish Congress is one for calling into military service by conscription forty thousand men. Although the army and navy of this country have been heretofore filled up in the same way, the measure this year provoked unusual opposition in the Cortes, and much difficulty is apprehended in its execution. The republican deputies, after a prolonged contest over the bill in its progress through both houses, all voted against it, and now it is said that notwithstanding the prudent counsels of the leaders of that party, armed resistance to its enforcement will be offered in several provinces by an irreconcilable element of the republican rank and file. Lieutenant-General Contreras, of the Spanish army, has left his seat in the senate, it is reported, to put himself at the head of the malcontents in Andalusia, and already a respectable force has joined his standard, who have interrupted the railroad communication with Seville by destroying the important bridge at Vilches.

A general convention of delegates appointed by the town organizations of the republicans throughout Spain is now sitting in Madrid, for the purpose, among other things, of expressing the views of the party upon the action of the executive committee, or "directory," as it is called, in advising their partisans against any armed demonstration at this time against either the established authorities or the particular act in question. The impatience, if not the dissent, of the masses is shown by the failure of many localities to appoint delegates to this convention, and also by the hostile attitude shown on the part of some of the delegates present; and several of the republican journals go so far as to advise their readers to seize the occasion presented by the execution of the conscription act for a serious attempt to overturn the monarchy. It cannot, however, be apprehended that public order will be seriously shaken in view of the firm attitude of Castelar, Figueras, Pi y Margall, and Orense, the recognized chiefs of the Spanish republicans, sustained as they are by a majority of the convention and several able newspapers representing their opinions.

The moment, however, is by no means without importance, when considered in conjunction with the persevering stand made by the Carlists in Catalonia, one of the richest and most populous principalities in Spain, and where the forces of the pretender have for several months kept the field against all the troops it has been possible for the govern-

ment to spare for operations in that quarter. With a stubborn insurrection on its hands in Spain, demanding the utmost exertions of the army, and another in Cuba for which large re-enforcements are needed, anything like a formidable republican rising might seriously cripple the means at the disposal of the government to deal with either. In any event it must be late in the winter before any considerable re-enforcements can be available for operations in Cuba.

You will be gratified to learn that in the regulations issued for recruiting the army of Cuba the secretary of war has prohibited the enlistment of criminals for that service. This tardy concession to our remonstrances is perhaps to be regarded as a fresh proof of the desire of the present cabinet to avoid any misunderstanding with the United States.

I have reason to believe that the appointment of Lieutenant-General Cordova, now secretary of war, to be captain-general of Cuba, is again under consideration.

I am, &c.,

D. E. SICKLES.

No. 358.

General Sickles to Mr. Fish.

No. 490.]

UNITED STATES LEGATION,

Madrid, December 3, 1872. (Received December 23.)

SIR: Late Saturday night I received a note from Mr. Martos, of which I inclose a translation. In compliance with his request I waited to receive him until half-past 2 a. m. of the 1st instant. He had come at once, he said, as soon as the cabinet council rose. They had reached, as he thought, a satisfactory conclusion. A majority of ministers had voted the immediate abolition of slavery in Porto Rico. Then came a grave question of ministerial crisis: several of his colleagues could not accept this resolution. Thereupon the president of the council decided that in view of the flagrant character of the Carlist and republican insurrections, and the necessity of completing the pending conscription, it would be inexpedient at this moment to accept the resignation of the minister of war. For reasons of equal gravity it was desirable that the finance minister should await final action on his budget. Under these circumstances the cabinet authorized the communication to my Government of the resolution taken, with the understanding that a brief interval would elapse, say until the 25th of the present month, before presenting to the Cortes the project of the law for immediate emancipation.

I asked Mr. Martos whether the Spanish minister in Washington would be instructed to inform you of this action, to which his excellency replied in the affirmative, stating that the dispatch was in the hands of the sub-secretary, and would be sent by cable at 6 a. m.

Thereupon, at half-past 3 a. m., I transmitted to you my telegram of the 1st instant, the secretary of legation, Mr. Adey, having awakened the operators in charge of the telegraph office for that purpose.

I am, &c.,

D. E. SICKLES.

[Inclosure.—Translation.]

(Received November 30, 1872, 11 p. m.)

PRESIDENCY OF THE COUNCIL OF MINISTERS.

MY DEAR GENERAL: I beg that you will not go to bed, but will await me to-night. I will go to see you, whatever may be the hour.

Your affectionate friend,

C. MARTOS.

 No. 359.
General Sickles to Mr. Fish.

[Extract.]

No. 491.]

 UNITED STATES LEGATION IN SPAIN,
Madrid, December 3, 1872. (Received December 23.)

SIR: Day before yesterday, in the afternoon, the president of the council of ministers called to see me and took occasion to speak of the action of the cabinet the night before. He confirmed the statements made to me at an early hour of the morning by Mr. Martos, and assured me of his firm purpose to proceed without unnecessary delay in the execution of the measures resolved upon in council with reference to Porto Rico. He regarded the resignations of the war and finance ministers as inevitable, and as soon as he could safely accept them, in view of the state of business in their departments, the emancipation law would be presented to Congress. He said he saw no reason that could hinder action beyond the 23d instant, the day when the conscription should be completed.

* * * * *

I am, &c.,

D. E. SICKLES.

 No. 360.
General Sickles to Mr. Fish.

No. 501.]

 UNITED STATES LEGATION IN SPAIN,
Madrid, December 11, 1872. (Received January 6, 1873.)

SIR: I have the honor to forward a translation of an interpellation in the senate, and another in the chamber, respecting the proposed sale of slaves in Cuba by the Spanish government, to which reference is made in my No. 496. You will note with satisfaction the declaration of the colonial minister that he has prohibited the sale. He fails, however, to state that these slaves held by the government have been liberated, as required by the law of July 4, 1870.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

Interpellation of Senator Cala, concerning the reported intention of the government to sell insurgent slave-property in Cuba, and reply of the colonial minister. Senate, December 9 and 10, 1872.

[From La Gaceta de Madrid.]

(Extract.)

SENATE, December 9, 1872.

* * * * *

Mr. CALA. I ask the floor.

The PRESIDENT. You have it.

Mr. CALA. Having read in the *Correspondencia de España*, a journal which has the reputation of being usually well informed, a piece of news from Havana stating that the government was about to sell those negroes appertaining to confiscated estates who were not employed in the factories, together with all stock-shares held by the partisans of the rebellion—having, as I said, read this statement in the *Correspondencia de España*, I desire to ask the government, and particularly the colonial minister, the following question: Is the government aware that the Cuban authorities propose to sell the slaves on confiscated estates? And if the government is cognizant of this purpose, has it taken any steps to prevent such action, in obedience to common right and the law decreed by the Constituent Cortes, which declared that all negroes becoming the property of the state should be free, and out of respect for the dignity of Spain, which should not be subject to the outrage and shame of having such an iniquity perpetrated on her soil? This is my question, and if the reply to it be not conclusive, I reserve the right to make an interpellation.

The MINISTER OF WAR. I ask the floor.

The PRESIDENT. You have it.

The MINISTER OF WAR. The government has no knowledge of the statement published by the paper to which the honorable gentleman refers, but he may rest assured that I will not permit to-day to pass without giving an account of his inquiry to the colonial minister, who will hasten to make a satisfactory reply.

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SENATE, December 10, 1872.

* * * * *

The PRESIDENT. The colonial minister has the floor.

The COLONIAL MINISTER. I wish to make a brief answer to the inquiry addressed to me yesterday by Mr. Cala. He asked me if the junta in Cuba had applied to the intendente for permission to sell such slaves as were not indispensable for the care of embargoed estates, and also such personal property of a perishable nature as would otherwise be liable to injury. The intendente telegraphed here for permission, and was answered telegraphically, denying to the junta permission to make such sale; but this refusal, which was made by telegraph, referred only to the slaves. With respect to personal property liable to damage, an order will go forward by the first mail, authorizing the junta to proceed to sell it.

Mr. CALA. I ask the floor.

The PRESIDENT. You have it.

Mr. CALA. I simply wish to express my satisfaction in receiving the reply just made by the colonial minister to my inquiry of yesterday. And although the latter part of his reply is not entirely satisfactory, I do not insist in any way, since the main object of my interrogatory has been answered.

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[Inclosure B.—Translation.]

Interpellation of Mr. Cisa respecting the reported sale of government slaves on embargoed estates in Cuba. Congress of deputies, December 9, 1872.

[Extract from La Gaceta de Madrid.]

Mr. CISA. I have read in the *Correspondencia* that it is proposed to sell the slaves taken from the Cuban insurgents; and as this would be a serious affair, I wish to know if it is really true?

The VICE-PRESIDENT. (Mr. Mosquera.) It is doubtless untrue; still the government will be informed of your inquiry.

No. 361.

General Sickles to Mr. Fish.

No. 505.]

UNITED STATES LEGATION IN SPAIN,
Madrid, December 14, 1872. (Received Jan. 6, 1873.)

SIR: I have the honor to forward herewith a translation of a report, taken from the official Gazette, of Mr. Cisa's interpellation respecting the sale of slaves held in Cuba by the Spanish authorities. The reply of the minister of the colonies is substantially the same as that made by him in the senate to a similar inquiry reported in my No. 501.

I am, &c.,

D. E. SICKLES.

[Inclosure.—Translation.]

Further interpellation of Mr. Cisa respecting the reported sale of embargoed slave property in Cuba, and reply of the colonial minister. Chamber of deputies, December 12, 1872.

[From La Gaceta de Madrid, December 13, 1872.]

(Extract.)

MR. CISA. Four days ago I addressed an inquiry to the government, and now that the colonial minister is on hand, I desire to repeat it. I have read in the Correspondencia that an order has been issued for the sale of the negroes which have belonged to the insurgents.

Moreover, in the same journal it is stated that the first mail-steamer will carry out to the colonies an order authorizing the embargoed estates commission to proceed to sell such personal property as may be liable to damage. I wish to know if this order is a fact, and by virtue of what law this personal property is sold?

THE COLONIAL MINISTER. The Cuban debt commission proposed to the intendente the sale of slaves not employed on plantations belonging to embargoed estates, and also of perishable personal property. By telegraph authorization to sell the slaves was denied, and to-morrow's mail will take out an order for the sale of personal property liable to damage. This is all I can say to the honorable gentleman.

No. 362.

General Sickles to Mr. Fish.

No. 506.]

UNITED STATES LEGATION IN SPAIN,
Madrid, December 15, 1872. (Received Jan. 6, 1873.)

SIR: I have the honor to forward herewith a report, taken from the official Gazette, of a debate between the minister of the colonies and Mr. Martinez Villergas, a republican deputy, on a proposition to order prosecutions against certain high functionaries in the colonies for misdemeanors in office. The remarks of Mr. Gasset are in part translated in Appendix B.

It is gratifying to see the minister recognizing the necessity of a redress of grievances in Cuba as being quite as essential as force in effecting the pacification of the island. You will also observe the significant doubt expressed in relation to the real parties sustaining the war in Cuba, and their motive.

The flagrant misconduct of the Spanish officials in the island is unhesitatingly confessed.

I am, &c.,

D. E. SICKLES.

[Appendix B.—Translation.]

Extract from the reply of the colonial secretary to Mr. Martinez Villergas. Chamber of Deputies, December 12, 1872.

[From La Gaceta de Madrid, December 13, 1872.]

The MINISTER OF THE COLONIES, (Mr. Gasset y Artime):

There is at the bottom of Mr. Villergas's proposition (and in this I find an additional reason to deplore its inopportuneness) some trace of a spirit in opposition to the views I believed were held by him as a republican, in common with all republicans, concerning the colonial question. Is it possible, Mr. Villergas, for the transmarine provinces to remain in the same situation as before the revolution of September? Is Mr. Villergas a partisan of the *statu quo*? Is he a defender of certain interests? Does he imagine that the best way to defend them is to sustain the *statu quo* at all hazards? As Mr. Villergas has skimmed over these points with great prudence, it is but fair for me to show the same prudence, and not go beyond him on this ground.

Mr. Villergas has said that measures to re-establish, restore, and give honest government to Cuba never come. It is an arduous, a difficult enterprise; but I demand of Mr. Villergas's sense of justice, of his upright spirit, of his sincerity, as revealed in his words to-day, that he tell me what any government here has done what has been done to this end by the government of which I am a member? I beg that Mr. Villergas, who has a thorough knowledge of events in Cuba, will tell me when he has ever seen greater energy shown by its authorities, or greater decision on the part of the government in helping them on their road. When has he seen eighteen officials brought to trial in a single month, or when has he seen the customs revenues of Havana increased by two millions in October and five and a half in November? Is this nothing to Mr. Villergas? Does Mr. Villergas know what takes place in the island of Cuba? Does he not know what the government is accomplishing, in spite of the difficulties it meets, in the way of restoring honesty in that corrupt administration? Ah! if I was in Mr. Villergas's place, if I were not bound to silence by the position I occupy, how much I could say on this point!

Mr. Villergas has gone some distance in a path where I cannot follow him, for although the colonial minister is a sort of universal minister, I have the good fortune not to be the minister of war; but as the colonial minister I have my opinion, and that is, that the war in Cuba is to be combated, rather than with soldiers, or at the same time as with soldiers, by political means, for in the present state of affairs measures of policy will be more efficacious toward success than soldiers. It is, gentlemen, very problematical by whom, and why, the war in Cuba is kept up as it is; and I, who have studied the matter a little, as in duty bound, have not yet been able to solve this problem.

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No. 363.

General Sickles to Mr. Fish.

No. 507.]

UNITED STATES LEGATION IN SPAIN,
Madrid, December 16, 1872. (Received Jan. 6, 1873.)

SIR: I have the honor to forward herewith a report, taken from the official gazette, of a discussion in the chamber of deputies between the first minister of the crown and Mr. Estéban Collantes, a conservative leader, touching colonial reform. A portion of the remarks of Mr. Zorrilla are translated.

I am, &c.,

D. E. SICKLES.

[Inclosure B.—Translation.]

Reply of the president of the council of ministers to Mr. Esteban Collantes. Chamber of Deputies, December 13, 1872.

[From La Gaceta de Madrid.]

[Extract.]

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The PRESIDENT OF THE COUNCIL OF MINISTERS, (Mr. Ruiz Zorilla.) I did not think my remarks would give Mr. Estéban Collantes sufficient motive to say what he has just said. I did not say that I desired to provoke a debate in this place. There was an opportunity a few days ago for all the deputies representing distinct groups or diverse principles to take part in a debate concerning the question of public order. I have said to the chamber, and I now repeat, that I thought of giving full and complete explanations about the recent occurrences, and about the present situation of the public order question; but Mr. Estéban Collantes's last words about "the integrity of our territory and our national honor" refer to I know not what; nor do I know what sort of a debate could be held in Congress on this point, for in this body, unless I am uninformed of it, there is not one who does not venerate the honor of Spain; nor do I know if the honorable gentleman intended to refer to certain reforms which the government is disposed to carry into effect because they are authorized by the constitution and laws, and is ready to bring before Congress in order that the co-legislative bodies may discuss them and vote them if they are of the same opinion as the government.

If the honorable gentleman referred to this class of reforms, I have only one thing to say in answer to him, namely, that those whom I believe to be mistaken, those whom I think deceive themselves on this point are they who imagine they defend the honor of Spain by obeying the spirit and the passion of party, without heeding circumstances or time or the lessons given by history to all those men who, at least in so much as refers to us, and in view of the position they occupy, are constrained to take heed of them, as I myself am bound to do. By what right has Mr. Estéban Collantes sought a pretext in my words to speak of the integrity and the honor of Spain? If I did not know the honorable gentleman so well; if I did not know that when he determines to be a law-abiding man, a man who does not seek to quit the path of legality, a man who always makes his deeds harmonize with his words; if I could confound him with those who say one thing in official life and another in those places where it may suit them to bear themselves otherwise, I might think, although I do not, that after the flag raised by the conscripts in opposition to the government has disappeared, after the question of the loan, also converted into an attack on the government, has disappeared, the honorable gentleman, without wishing to do so, and without being aware that he is doing so, is aiding those who seek to make the question of reform in the colonies a question of patriotism, of abnegation, and of territorial integrity. No man, of whatever political party, can outdo in love of country those who occupy this bench, (the "blue bench,") and there is no one, absolutely no one, in all the political parties (although in expressing myself thus I may appear to vaunt myself) who has fewer private relations with the Antilles, who has less in common with any of the passions or the interests which are especially agitated there, than the minister who has the honor to address you; but neither is there any one more resolved and more desirous to study calmly the question of the Antilles, and to do what as a liberal he ought to do without forgetting his duty as a Spaniard.

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No. 364.

General Sickles to Mr. Fish.

No. 508.]

UNITED STATES LEGATION IN SPAIN,
Madrid, December 16, 1872. (Received January 6, 1873.)

SIR: I have the honor to forward herewith for your information a copy of an official publication of a law declaratory of the naval force to be kept in commission for general service at the cost of the supreme government of Spain for the year 1872-'73.

It will be understood that additional naval forces are maintained for colonial service at the expense of those provinces, the particulars of which will perhaps appear in the budget of the minister of Ultramar when that document shall be published.

This law provides for two iron-clad frigates, one of twenty-three and the other of six guns; the former to be in commission for twelve and the latter for six months. Also five screw frigates, of which two carry forty-eight guns, another forty-one, another thirty-eight, and the fifth thirty-two guns. Also two corvettes, one of five guns and the other of two; and seven schooners of two guns. Two frigates, a corvette, and two schooners are to be kept in service six months, and the remainder for the year. Eleven side-wheel steamers are also to be in commission, these carrying from two to eighteen guns each, and having engines running from 120 to 500 horse-power.

Five thousand eight hundred sailors and three thousand four hundred and ninety-eight marines (*solados de infanteria de marina*) are called into service.

I also append a copy of the recent law declaring the term of service of crews of ships of war to be four years under arms and one year in the first reserve.

I am, &c.,

D. E. SICKLES.

No. 365.

General Sickles to Mr Fish.

No. 509.]

UNITED STATES LEGATION IN SPAIN,
Madrid, December 16, 1872. (Received January 6, 1873.)

SIR: I have the honor to forward herewith a translation of a report of a meeting of the leading personages belonging to the several reactionary parties and groups opposing the present cabinet, held for the purpose of organizing a league to defeat the measures of colonial reform announced by His Majesty's government.

Carlists, Alfonsinos, conservative constitutionalists, moderadors, colonial clubs, and a person calling himself a republican, a Mr. Eugenio Garcia Ruiz, made up this remarkable assemblage. You will be surprised, perhaps, to notice among the prominent actors on the occasion the Duke de la Torre, Admiral Topeté, Mr. Sagasta, Romero Robledo, Mr. Ayala, Mr. Balaguer, and others, who, as members of previous cabinets, have heretofore declared themselves in favor of the action now taken by Mr. Zorrilla's administration respecting colonial reform. In Appendix C you will find a leading article from *El Imparcial*, containing abundant proof of this inconsistency. Marshal Serrano was at the head of the cabinet in May, 1871. The policy of his administration in relation to colonial reform, as indicated in the speech from the throne, and in the address of the chamber of deputies, is not distinguishable from that now being carried out by Mr. Zorrilla. Eighty-six conservative deputies, whose names are italicized in Appendix D, then voted for the address, which contained a distinct pledge to concede political rights to Porto Rico, and acknowledged that the war in Cuba was the result of past colonial misrule.

And apart from the statements made to me by Marshal Serrano on his

again taking office last June, I am informed by Mr. Layard that the duke then assured him that it was the purpose of the government to proceed at once with administrative and political reforms in Porto Rico, including the abolition of slavery; and in reply to the inquiry of the British minister, whether he might communicate the conversation to his government, the president of the council of ministers distinctly authorized him to do so. Although the brief episode of office of that cabinet (June, 1872) rendered action on any question impossible, these repeated affirmations increase the astonishment with which one must regard the present attitude of Marshal Serrano and his supporters. It may well be anticipated that a "league," comprising many influential members, and controlling numerous effective agencies, will seriously embarrass the government in the execution of its plans. The league has already secured the support of two-thirds of the newspapers of the capital, and a large proportion of the provincial journals. By means of co-operative societies in the principal manufacturing and agricultural provinces, the pro-slavery league will appear to the classes who enjoy a monopoly of the colonial trade; nor is it easy to estimate the effect of an exhaustive effort to arouse Spanish national pride by the assertion so persistently made that the concession of self-government to the colonies invoke the loss of the last of their American possessions, and the irretrievable depreciation of Spanish power.

The Spanish element in both islands is relatively small. Local governments, depending on popular suffrage, would be in the hands of the creoles. The old system of arbitrary rule, confining the administration to the hands of employés sent from the peninsula, and diverting the resources of the island wholly toward Spanish channels, once replaced by a more just and conciliatory policy, might be fatal to vast interests that have grown into being with the generations that have profited by despotism and servitude in Cuba and Porto Rico.

I am, &c.,

D. E. SICKLES.

[Inclosure B.—Translation.—From El Debate, December 14, 1872.]

Organization of a league of defenders of the national integrity.—Reported proceedings of the Spanish and Colonial Club on the afternoon of December 14, 1872.

We have just witnessed the most imposing spectacle ever seen in Spain. In view of the terrible dangers that threaten the national integrity in the colonies, through the reckless projects of reform which the government has already begun to execute, all parties and all Spaniards have rallied, as in 1808, at the country's cry, to form a strong and powerful league, whereby to check the power of fillibusterism and save the integrity of the nation.

The most important public men in Spain assembled to-day at half past two o'clock in the rooms of the Spanish Colonial Club of Madrid. The meeting was opened by the Marquis of Manzanedo, the president of the club. He made a statement of all that had been done up to that moment to prevent the government from following out the baneful path it has undertaken, and concluded by saying that all had unfortunately been in vain, and that the government was obdurate in its resolve to ruin the country.

Mr. Duran y Cuervo said that reforms would in fact effectively terminate the Cuban insurrection, as Mr. Zorrilla had remarked to the press delegation, but that they would do so by destroying our power in America, since these reforms are even more than autonomy, and naturally, if they are given to the insurgents in arms to-morrow, and the island with them, the rebel hosts would to-day lay down their arms. He proposed that a league of all parties should be formed, a formidable coalition, naming an executive committee, in which all should be represented, so as to work in unison in defense of the national flag.

Mr. Romero Robledo stated that the hour for action had come. Something must

be done to confront the government with a powerful resistance, in order to avoid the loss of the Antilles. The crisis is terrible; never has the country been in greater danger; it is absolutely necessary to sacrifice life and treasure, as the Spaniards beyond the seas are doing; to dare all, or to turn aside and weep like women over the shame of Spain.

But when he beheld all parties united there, he realized that all Spaniards were resolved to sell dearly the honor and dignity of the nation, since it was not an electoral coalition that was proposed, but the salvation of the holy cause of their country.

He proposed that a unanimous protest should be signed by all who were there present, and, seconding what Mr. Duran had said, he added: "Shall we permit it to be said to the insurgents, ground your arms to-day, for in two months' time independence will be given to you with reforms? Shall we consent to the cowardly and miserable surrender of the island of Cuba to our enemies? Are not our volunteers and our soldiers dying there? What do we fear? Do we perchance dread the calumnies of the government, or that it may exile us or take away our lives? What are these compared with the defense of our country, with the interests of all our towns, now spectators of their own ruin, and with the dishonor which awaits us?"

Mr. Vildósola rose to say that those who to-day demand the dismemberment of the territory scarcely numbered a dozen men; that they were not even the whole government; that they only formed half the government, and "shall we submit to the rule," he added. "Shall we allow all Spain to be shamed by four or five adventurers?" "The representatives of all Spain are here; let us decide on a course that will save her!"

General Caballero de Rodas then spoke, and said a member of a cabinet, of which Mr. Zorrilla formed part, had proposed the sale of Cuba, which now was about to be covertly given away; and that then, as always, he was ready to raise against it, having recourse even to rebellion in order to prevent it.

The Duque de la Torre (General Serrano) stated that he was of Mr. Duran's opinion, that a *junta* should be formed of all parties, for the purpose of saving the national integrity.

Mr. Carramolina said that the banner of his party had for its fundamental motto the same as that of all truly Spanish parties, the motto of the integrity of the nation.

Admiral Topeté stated that he had formed part of the government to which General Caballero de Rodas had alluded; but Mr. Caballero did not allow him to conclude his remarks, observing that Mr. Topeté was a good Spaniard, and incapable of ever imagining such a treason; that he alluded to somebody else.

Mr. Moyano said that a union of all parties ought to be able to save the country now menaced with death, and, like the Duke de la Torre, he was of the opinion that a league of all parties should be formed for that purpose.

Mr. Estéban Collantes stated that the Palencia committee was composed of a republican, a radical, an Alfonsist, a constitutionalist, and a Carlist, all united to save the national integrity.

(Mr. Sagasta and Mr. Ayala here entered the saloon.)

General Sanz said that he agreed with the Duke de la Torre, that a league of all parties should be formed to save the flag of Spain in the colonies.

Mr. Reinoso, a representative of the industry, the commerce, and the agriculture of the province of Valladolid, added that he was of the opinion that, putting all political differences aside, all parties should unite to save the honor and the integrity of the nation.

The Marquis of Manzanedo summed up the debate, stating that as all present were agreed upon one course, the occasion had arrived for designating the persons who were to form the national league for the defense of the integrity of Spain in the colonies, and that the individuals of each party present should retire and deliberate separately in order to name its representatives.

This was then done, and in a short time the committee was organized in the following form:

Mr. Canovas's society.—Messrs. Caballeros de Rodas, Salaverria y Canovas del Castillo.

The Moderado Club.—The Count de Toreno, General San Roman, and Mr. Trupita.

The junta of the old Conservative Club.—Mr. Moyano, Don Fernando Alvarez, and Don Domingo Moreno.

The Constitutional Club.—Messrs. Topete, Ayala, Sagasta, and Belaguer.

The Carlist Club.—The Count de Cagua, Argüelles, and Messrs. Vildósola and Echevarria.

Republicans.—Don Eugenio Garcia Riez, and two other gentlemen whose names we do not recall.

The Spanish and Colonial Club of Madrid.—For the club and representatives of the industry, agriculture, and commerce of Seville, Don Domingo Dominquez. For the ditto, ditto, ditto, of Santander, Don Manuel Corral. For the ditto of Bilbao, Mr. Hurtado. For the ditto of Valencia, Mr. Santos. For the ditto of Palencia, Mr. Esté-

ban Collantes. For the ditto of Valladolid, Mr. Reinoso. For the ditto of Cadiz, Don Vicente Cagigas. For the ditto of Saragossa, Don Justo Zaragoza. For the ditto of Porto Rico, Don Francisco Amell. For the ditto of Cuba, Don Juan Alés.

It was agreed to invite all the remaining societies in Spain who have not yet been able to send representatives to Madrid, as was the Spanish and Colonial Club, and the representatives of the agriculture, industry, and commerce of Barcelona, who will arrive to-morrow, to name a representative in this league.

Mr. Romero Robledo was also named a member by acclamation.

The Marquis of Manzanedo asked for a vote of absolute confidence and unconditional approbation for all that may be done by the committee just named, for the purpose of defending in every field and by every means the integrity of the country; and this was carried by acclamation.

In this manner the patriotic reunion was brought to a close, all parties being united in one single band, imposed by love of country to form.

LA SIGA DEFENSORA DE LA INTEGRIDAD NACIONAL.

[Inclosure D.—Translation.]

[Leading article from *El Imparcial* of December 16, 1872.]

THEN AND NOW.

In the session of the chamber of deputies, of May 24, 1871, the report of the committee on the reply to the speech from the throne was read; and in it occur the following words with reference to colonial reforms:

"The civil war that to-day rages in Cuba is a fatal legacy of the old régime under which rancorous passions fermented and prepared the way for an outburst; but the congress of deputies shares with Your Majesty the hope that it may be speedily terminated. The firmness of the government, the patriotism, valor, and endurance of the navy, the army, and the volunteers, the skill of their chiefs, and the continued earnestness of the whole nation, will all contribute to this end, when joined to the conviction that must at last reach the minds of the rebels that by their submission they will attain liberties they seek in vain to win by force. The resort to this only hinders the fulfillment of the promises of the revolution, the *complete realization* of which will doubtless not be much longer deferred, as Congress, in the other great Spanish Antilla, where peace has not been disturbed, and where the *full enjoyment* of political rights and the abolition of slavery cannot exert a disturbing influence."

This report was signed by Messrs. Nicolas Maria Rivero, chairman; *Francisco Romero Robledo*, Gabriel Rodrigues Tomas Maria Mosquera, *José Abascal*, and *Juan Valera*, secretary.

It was fully discussed, and during the course of the debate, which terminated on the 23d of June without any modification of the report, it occurred to none of those who to-day maintain with such ardor the necessity of employing all means, and even force, to prevent the fulfillment of those promises in the provinces where the government acting with the utmost prudence, believed that they could be realized to make the slightest objection, on the ground of the fears that now assail them.

An amendment, of Messrs. *Cánovas del Castillo*, *Ardanas*, *Alvarez*, *Bugallal*, *Elduayen*, *Fabié*, *Estrada*, and *Don Francisco Silvela*, contained among other proposals the following:

"The Cortes, while awaiting that happy event, (*the submission of the rebels*), will give mature consideration to such measures as may be presented to them for bettering the political administrative and economical situation of our provinces beyond the seas."

This amendment which did not even express the sacredness of the system of *statu quo*, now defended, was withdrawn by Mr. *Fabié*, who before doing so asked several explanations of the government, to which Mr. *Ayala*, the colonial minister, replied that the paragraph of the address referring to the affairs of his department afforded no motive for alarm of any kind, and was accepted by all.

As far as the reported address is concerned, it should be remembered that during the whole course of the debate thereon, the proposition of the committee with respect to colonial reforms was in no manner whatever impugned by the conservatives.

The Carlists and Moderados alone denied that the Cuban war was "a fatal legacy of the old régime," and, as we have said, after long and patriotic speeches the address was put to the vote, and approved in the exact form proposed by the committee. The following gentlemen voted in its favor:

Ferratges, *Rios y Portilla*, *Don Praxedes Sagasta*, *Don Cristino Martos*, *Don Augusto Ulloa*, *Lopez Ayala*, *Beranger*, *Moret*, *Alvareda*, *Galvez Canero*, *Belanguer*, *Topete*, *Pastor y Landero*, *Rozas*, *Sastre y Gonzales*, *Mansi*, *Don Joaquin Garrido*, *Vidal y Lopez*, *Peris y*

Valero, Navarro y Rodrigb, Prieto, Palan, Miranda, Don Vicente Rodriguez, Soriano Plasent, Crespo, Serrano Bedoya, Fernandez de la Hoz, Ruiz Gomez, Rivera, Candan, Soto, Merelo, Palacios, Montero de Espinosa, Rivero, Nunez de Valasco, Sainz de Rozas, Sequera, Don Pedro Sagasta, Gamazo, Muniz, Ramos Calderon, Mozeno Benitez, Camacho, Escoriaza, Muños, Vargas, Romero Giron, Don Gabriel Rodriguez, Villavicencio, Valbuena, Gasset y Artime, Gallego Diaz, Higuera, Andrés Moreno, Ruiz Huidobro, Gomez Arostegui, Muños Herrera, Don Luis Angulo, Don Joaquin Banon, Rojo Arias, Abellan, Caraseo, Anglada, Don Francisco Banon, Navarro y Ochoteco, Sinnés, Orozeo, Zurita, Bobillo, Miguel y Dehesa, Bermudez, Don Cayo Lopez, Nuet, Fabra, Fernandez de las Cuevas, Don Gaspar Rodriguez, Don Juan Valera, Don José Maria Valera, Romero Robledo, Mosquera, Moya, Acuña, Peñuelas, Conde de Agramonte, Perez Zamora, Martinez Perez, Patxot, Cruzada Villaamil, Don Vanancio Gonzales, Reig, Ruiz Capdepon, De Blas, Lafitte, Merelles, Fernandez Muños, Barrenechea, Alonso, Herrero, Tijada, Don Enrique Martos, Zabalza, Morales Diaz, Marcias Acosta, Muños de Sepulveda, Montesino, Don Eugenio Montero Rios, Don José Maria Chacon, Gomis, Nunez de Arce, Alcaraz, Montero y Guijarro, Fandos, Don Castor Garcia, Brú, Lopez Guijarro, Don Candido Martinez, Leon y Castillo, Martinez Bárcia, Marques de Sardoal, Duque de Veragua, Hernandez Lopez, Arias y Giner, Lasala, Don Ricardo Chacon, Becerra, Mata, Don Santiago Angulo, Pellon y Rodriguez, La Ordan, Gonzales Zorrilla, Sans y Gorrea, Cardenal, Burell, Damato, Vicens, Pinol, Alcalá Zamora, Lafuente, Robledo Cheed, Roger, Pasaron y Lastra, Don Patricio Pereda, Alonso Colmenares, Gullon, Labra, Loring, Sanlate, Diegues Amoeiro, Abascal, Don Juan de la Cruz Martinez, Garcia Gomez, Henao y Muños, Alareon Lujan, Terrero, Moreno Nieto, Shelly, Conde de Villaneva, de Perales, Avila, Ruano, Saavedra, Marqués de Camarena, Ibarrola, Serrano Dominguez, the vice-president, Herrera.

Total 164, of which 85 were conservatives, as has since appeared, and to-day defend the opposite of what they voted for, and 79 radicals, who are now simply fulfilling what they then offered to do.

It is therefore demonstrated, and demonstrated to conviction, by a simple reading of the foregoing extracts, that the conservatives of to-day do not follow the same conduct or defend the same principles touching the concrete question of the colonies, as they followed and defended in the months of May and June, 1871.

The conservatives therefore combat the radical policy on this point, not from love of integrity and nationality, which all of us have defended while following our own course as radicals, but purely and simply for the convenience of their system of opposition à l'outrance.

It is indispensable to clear up this matter thoroughly, so that there shall not exist the least doubt about it, in order that all the world may know and comprehend how much truth is at the bottom of this attitude which seeks to stir up feeling against the present ministry.

Either one of two things. Either the conservatives draughted, voted, and sustained the paragraph from the address which we have quoted because they thought it laid down the most patriotic course in the colonies, or they prepared it, voted for it and defended it believing the contrary, and secretly resolving not to put it in practice.

If they were inspired by the latter idea, it is not for us but for them to say so, for in spite of all that they have done and said, we do not believe them capable of so dishonorable a proceeding, which, to quote their own language, would be an *allowable falsehood*, (*mentira licita*), and then to justify a *profitable fraud* (*supercheria provechosa*) to-day.

No. 366.

General Sickles to Mr. Fish.

No. 510.]

UNITED STATES LEGATION IN SPAIN,

Madrid, December 17, 1872. (Received January 15, 1873.)

SIR: I have the honor to transmit herewith, inclosed, an official publication of a decree establishing municipal institutions in the province of Porto Rico. The decree recites that it is sanctional on the recommendation of the colonial secretary, in accordance with the advice of the council of ministers, and in conformity with the municipal law of Spain, approved August 20, 1870.

This ordinance, besides affording a large measure of local authority to the towns, supplies the means to give force and effect to the measure

providing for a provincial assembly adopted some time ago. It is proper to observe, however, that as generally happens in the action of this government respecting its colonies, much is left dependent on "regulations" and further orders yet to be made before this decree can go into operation. For example, you will notice that it is provided in article 156, clause 2, that "the government will issue, in conformity with this decree, the regulations necessary for its execution."

It is further provided in clause 2 of article 157, "that when the provincial assembly shall have designated the several municipalities in the island, the election of town councils shall take place when ordered by the government." These imperfections, usually the occasion of much procrastination, as in the case of the so-called emancipation act of July 4, 1870, which yet remains inoperative, are too often found in the laws and ordinances adopted in this country having relation to its colonial possessions. Indeed, a decree almost identical with that now published, was issued some two years ago, and on the suggestion of the governor of Porto Rico, General Baldrich, that the modifications now made were very necessary, its execution has ever since remained in abeyance, nor can it be doubted that however sincerely the present cabinet may mean to enforce the present measure, if their successors should be taken from any of the several parties now openly hostile to colonial reform, this concession would be withdrawn as so many others have been countermanded by previous administrations, to the deep disappointment of the patient colonies.

These observations made, I can do no less than commend the good faith and courage shown in the promulgation of the municipal franchises decree of the 14th instant. It has seldom happened in the history of Spanish colonial administration that a cabinet has so boldly confronted an organized and powerful resistance to colonial reform. It is not too much to say that during the past three weeks all Spain has been moved by the agitation gotten up by the partisans of the old colonial *régime*. The opposition has employed every resource and tried all means to baffle and intimidate the government. All the reactionary parties have rivaled each other in crying "Danger to Spanish unity!" "Our colonies are lost!" "Treason in the palace!" Meetings have been held in all the principal towns, under the auspices of societies interested in the trade with the colonies. Agents of the slave-holders in Cuba and Porto Rico have been busy in all kinds of appliances intended to gain over or silence the friends of emancipation. A formidable combination of newspapers, comprising five-sixths of the journals in the capital, and many in the provinces, have become the clamorous organs of the slave-holders. A shower of petitions, letters, and telegrams from all parts of the country is represented as an outburst of popular feeling against reform. From Cuba comes the announcement, by cable, that seventy thousand volunteers unite in the demand that no reforms be granted to Porto Rico while an insurgent survives in Cuba. The leaders of all the opposition parties, except the republicans, have met and formed a "league to defend the national domain." And finally, on Wednesday night last, the 11th instant, the capital was made the scene of an armed demonstration in the streets, the insurgents crying, "Down with the filibusters!" and firing on the police and the troops, several of whom were killed. One of the bands attacked the carriage of the prime minister, in which he was supposed to be driving, and mortally wounded a lackey alongside of the coachman, the occupant of the coach, a deputy, narrowly escaping. This outbreak lasted several hours, and was not quelled until a good many of the rioters were shot or bayoneted. An attempt was

made to give this seditious movement the appearance of "a republican rising;" but the instantaneous and indignant denunciation of the act by all the republican chiefs, and the circumstance that the prisoners taken and those who fell in the struggle with the police and the troops were clothed in rags and yet had their pockets well filled with money, the obvious price of their service, quickly betrayed the real origin of the outrage.

The appearance of the first of the series of the promised reforms in the face of so much opposition and in defiance of threats and force, has exasperated while it has disappointed the "league." Agitation is renewed with unshaken determination and zeal. The next demonstration is to be made in the Cortes, and another at the palace is to follow.

In the discussions which fill the journals from day to day the United States Government and its representative here are said to have some secret compact with this cabinet, binding it to a policy described as degrading to Spanish honor and dangerous to national interests. My published dispatches to the Department of State are reproduced with interpolations intended to falsify the text and pervert the meaning of the original. General de Rodas asserts that while he was captain-general of Cuba a minister of the Crown attempted to sell the island. And Mr. Romero Robledo, a member of the late cabinet, declared that the moment has come when it is necessary to sacrifice life and forsake home in defense of imperiled honor and vested rights.

It is understood that, while a majority of the cabinet adhere to the fortunes and opinions of Mr. Zorilla in his colonial policy, three of the ministers hesitate to follow their colleagues and will resign before any further steps be taken. Such a defection in the cabinet cannot happen without making a serious impression on the ranks of the government supporters in Congress, although it may be assumed that the republican deputies will vote for the bill abolishing slavery.

Under all these circumstances, in presence of a resistance not unlike that encountered by Charles the Fifth, when he undertook to restrain the usurpations and greed of his viceroys in America, I cannot but applaud the firmness and dignity so far shown by His Majesty's government in dealing with the difficult questions of colonial reform on a basis consistent with justice and the provisions of the Spanish constitution.

I am, &c.,

D. E. SICKLES.

No. 367.

General Sickles to Mr. Fish.

[Telegram—Received December 22, 1872, 4.20 p. m.]

MADRID, *December 22, 1872.*

Both houses of Congress have accepted, by decisive majorities, the colonial policy indicated in my telegram of 1st instant. Colonial and finance ministers resigned. Successors in accord with their colleagues and Congress. President of council announced that bill for immediate emancipation would be introduced before holiday recess.

SICKLES.

No. 368.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *December 23, 1872.*

Urge the immediate release and restoration of embargoed property belonging to American citizens, especially of those whose release has been promised. It is important that there be no further delay. Several estates whose release has been promised have recently been advertised to be leased, and are still held by the authorities in Cuba, in defiance of assurances given in Madrid.

FISH.

No. 369.

General Sickles to Mr. Fish.

[Telegram.—Received December 25, 10 a. m.]

MADRID, *24 December, 1872.*

Minister of ultramar presented to-day in the chambers of deputies the bill for immediate emancipation in Porto Rico. No doubt is entertained of its speedy passage.

SICKLES.

No. 370.

General Sickles to Mr. Fish.

[Telegram.]

MADRID, *December 29, 1872.*

Since receipt of your cable of 23d, Martos has been ill. Minister of ultramar informed me that he had sent orders by cable and post to the authorities in Cuba to hasten action in all pending cases affecting citizens of the United States. Mr. Mosquera regards these cases as within the exclusive jurisdiction of the Washington commission, and has so instructed the captain-general of Cuba, at the same time directing him to execute promptly the orders and judgments of that tribunal.

SICKLES.

No. 371.

General Sickles to Mr. Fish.

[Telegram.—Received 10.30 p. m.]

MADRID, *January 3, 1873.*

Minister of state communicated to me to-day, under reserve for your information, preliminary resolution of council of ministers respecting basis of pacification in Cuba. It comprises—

First. General amnesty.

Second. Return of confiscated property.

Third. Gradual abolition of slavery within a brief period.

Fourth. Provincial assembly and municipal franchises.

Fifth. Representation in the Spanish Congress by senators and deputies.

Mr. Martos suggests that an indication from you of the probable acceptance of the foregoing would facilitate formal action of this government.

SICKLES.

No. 372.

General Sickles to Mr. Fish.

[Telegram.—Received 8.49 p. m.]

MADRID, *January 3, 1873.*

Interview with minister of state to-day. Under date of 28th ultimo, minister of ultramar sent royal orders by post to captain-general of Cuba to hasten and facilitate action in cases of Mora and Mueses. Telegrams likewise sent in same sense respecting these and other cases of embargo. For reasons you will appreciate, having reference to the situation in Cuba, this government can enforce judgments of the mixed commission in favor of claimants with less difficulty and delay than are incident to voluntary release.

SICKLES.

No. 373.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *January 7, 1873.*

Fourth condition in telegram of January 3d not intelligibly transmitted. Gradual abolition is indefinite, and, at best, is insufficient; the rest is well so far as it goes; but without a free provincial legislature, chosen by the inhabitants, and having the general control of the internal affairs of the island and of its inhabitants, and regulating taxation, and without the separation of military from civil jurisdiction, and the subordination of the former to the latter, and a limitation of the number and the power of officials appointed by the home government, it is not thought that the terms indicated could be accepted.

We suppose that local municipal government is intended in the fourth condition of your telegram.

It is hoped the ministry will see the wisdom and moderation of the suggested concession. They are just and in the spirit of the professions of the present government.

The President is most desirous to see and to aid in effecting a satisfactory and honorable termination of the present disastrous condition of affairs, but his good offices must be formally requested, and a satisfactory indication be given of reforms that will be conceded.

FISH.

No. 374.

Mr. Fish to General Sickles.

No. 295.]

DEPARTMENT OF STATE,
Washington, January 8, 1873.

SIR: I have received and have read with interest your dispatches numbered 501, 505, and 506, the last bearing date December 15, relating to the alleged intention of the Cuban authorities to sell the slaves upon the embargoed estates, and to other measures relating to the administration of affairs in that island.

I have remarked with satisfaction the declaration of the colonial minister in his remarks of December 10, to the effect that he had prohibited the sale of slaves upon the embargoed estates. The circumstance to which you call attention that the minister omits to state that slaves belonging to the government have been liberated, agreeably to the law of July 4, 1870, is significant. The terms of the fifth article of that law appear to be explicit, that "all slaves belonging to the state, for whatever cause, are declared free." Humanity, as well as good faith, requires that these provisions should be carried into effect, and that these slaves should be set free without delay.

I am, &c.,

HAMILTON FISH.

No. 375.

General Sickles to Mr. Fish.

[Telegram.]

MADRID, January 18, 1873.

Conference to-day with ministers of state and ultramar respecting embargoed estates. It was agreed that the latter cable, captain-general of Cuba, and the former cable, Admiral Polo, authorizing and directing them to act in relation to pending cases and enjoining dispatch in their proceeding. Minister of state expressed surprise and regret at continued delay in cases of Mora, Mueses, Hernandez, Criado, and Mrs. Mora.

SICKLES.

No. 376.

General Sickles to Mr. Fish.

[Telegram.—Rec'd Jan. 18, 6.45 p. m.]

MADRID, January, 18, 1873.

Orders given by minister of ultramar that no fines be imposed on captains or supercargoes in Cuba without approval of intendente.

SICKLES.

No. 377.

General Sickles to Mr. Fish.

No. 522.]

UNITED STATES LEGATION IN SPAIN,
Madrid, January 19, 1873. (Received February 12.)

SIR: The cabinet crisis foreshadowed in my No. 490 happened sooner than was anticipated. Mr. Bugallal, a conservative deputy, alarmed by the current rumors respecting colonial reforms, took occasion, in the sitting of the 18th ultimo, to demand an explanation of the views of ministers. The reply of the president of the council was unexpectedly frank and positive in its announcement of a new colonial policy. Mr. Becerra, colonial minister in 1869, and one of the advanced radicals in the chamber, immediately offered a resolution indorsing the programme of the government. After an animated and interesting debate, the motion was "taken into consideration" by the decisive vote of 182 ayes and 7 noes. Appendix A furnishes a translation of the salient points in the speeches of Mr. Bugallal, the president of the council, and Mr. Becerra. Appendix B contains the report of the proceedings, as published in the official gazette.

The announcement of a new colonial policy to be initiated in Porto Rico, embracing the immediate abolition of slavery, municipal liberty, and qualified provincial autonomy, quickly followed by an emphatic indorsement of the programme in the popular branches of Congress, presented the contingency for which I had been prepared by the intimations of the minister of state. Mr. Gasset y Artime, minister of ultramar, and Mr. Ruiz Gomez, secretary of the treasury, at once resigned. General Cordova retains the portfolio of the war department temporarily, in view of the Carlist insurrection and the pending bill for the re-organization of the army, it being understood that he dissents from certain features of the new colonial programme, and may retire at a later day. Mr. Echegaray is transferred from public works to the treasury; Mr. Mosquera, one of the vice-presidents of the chamber, goes into the colonial office; and Mr. Becerra replaces Mr. Echegaray.

Congress having, in compliance with custom, suspended business pending the re-organization of the cabinet, the tribunes were crowded on the re-assembling of the chambers on the evening of the 20th, when it was expected that Mr. Zorilla would make the usual official statement. It happened, however, that when the new cabinet made its appearance, as a matter of form, in the senate before repairing to the lower house, Mr. Cervera, a republican senator, cleverly seized the occasion to obtain an expression from his colleagues with reference to the new colonial policy. The president of the council had no sooner taken his seat on the "blue bench," occupied by ministers, than he was drawn into a discussion involving an exposition of the plans of the cabinet, as now organized. Mr. Suarez Inclán, a pronounced and somewhat impetuous partisan of the old *régime*, vehemently assailed the new departure in colonial affairs. His effort to inflame the Spanish heart by suggestions of foreign influence brought out the minister of state, whose speech you will find worth perusal. The debate was continued by the Marquis of Barzanallana and Mr. Mosquera, the colonial minister. Hereupon Mr. Cervera, in behalf of his republican associates, offered a resolution approving the declarations of the government, significantly adding, "we scarcely venture to applaud them, for we are not content with so little and seek to go much further." Mr. Calderon Collantes, a distinguished figure in the anti-dynastic opposition, endeavored to prevent a vote as inopportune, after "so

stormy and indecorous a session." He said, "all parties felt that the future of the country and the honor of the nation were involved." The senate was, however, in no mood for delay, and after brief addresses from Mr. Rojo Arias and Mr. Cervera the resolution was adopted, 51 to 5. A translation of this debate will be found in Appendix C, and the original text, clipped from the official gazette, is contained in Appendix D.

In the chamber of deputies, the president of the council of ministers having explained the causes of this crisis, and the nature of the questions out of which it arose, the debate was continued on Mr. Becerra's vote of confidence proposed on the 17th (Appendix E.) Mr. Estéban Collantes, brother of the senator, and General Gaudara, formerly captain-general of San Domingo, opposed the proposition in speeches of considerable power. If you do not find much that is new in their arguments, it may be useful to peruse the most that two able men could oppose to the enlightened and judicious policy of reform. These conservative leaders were effectively answered by Mr. Ramos Calderon and the minister of public works, Mr. Becerra, the mover of the proposition under consideration, and who had been called into the cabinet after the preliminary vote of the 17th.

You will observe that Mr. Estéban Collantes, in the chamber of deputies, ingeniously quoted some of the remarks of Mr. Martos, as reported in my No. 34, to show that colonial reforms are dangerous and impracticable in Cuba; he denounced the municipal law, because in permitting foreigners to vote it might happen that the Antilles would be lost through universal suffrage; it besides permitted the local authorities to impose duties on articles of consumption, and this would ruin the commerce of Castile and Catalonia; and he maintained that loyal Spaniards in Cuba did not want reforms; only traitors demanded them, to whom no concessions should be made.

Mr. Becerra's reply was cogent, but I regretted to hear the new minister affirm, as his personal opinion, that "a dictatorship would be the best means of ending the war speedily."

Mr. Calderon put the argument on commanding ground. He said no advantage could justify prolonging the servitude of those whose freedom had been proclaimed that night by the president of the council. Every man on Spanish soil was entitled to the liberty guaranteed by the Spanish constitution. Now, even the loyal white men of Porto Rico were free everywhere except at home in their own native island. The radical party was bound to see that all Spaniards, white and black, colonial and peninsular, stood free and equal before the law.

The debate was adjourned at half past two in the morning. This day's proceedings will be found in English in Appendix E. The Spanish text is in Appendix F.

Resumed at the same hour on the afternoon of the 21st, the discussion continued until after midnight, culminating in a magnificent speech from Castelar, the great republican orator. The minister of state, in deference to the usual form of proceeding, was the last to speak; but he could only say, "The debate is closed. Mr. Castelar has spoken the last word—the slaves in Porto Rico are already free. The bill the government will bring in can only give legal sanction and form to the inspired utterance of the world's greatest orator."

The vote was then taken, and Mr. Becerra's proposition was adopted, 214 voting in the affirmative and 12 in the negative. Among the notable names recorded in favor of colonial emancipation is that of Don Cristóbal Colon de la Cerda, Duke of Verazua, Marquis of Jamaica,

"Admiral, &c., of the Indies," a lineal descendant of the discoverer of America.

A *résumé* of the last day's debate is given in English in Appendix G. Mr. Castelar's speech in full, translated from a Spanish report, revised by himself, will be found in Appendix H. The original Spanish text of this day's proceedings, as reported in the official gazette, is in Appendix I.

You will observe that Mr. Bugallal put great stress upon a coincidence he pointed out between the views expressed in the president's message and the policy now announced by the Spanish cabinet. Mr. Martos answered that the resolution of "his colleagues was taken in November and communicated to Europe and America; whereas the message of President Grant was read to Congress on the first Monday of December. It would therefore be more reasonable to assume that the friendly tone of the American Executive, so unusual in speaking of Spain and Spanish affairs, was due to the sympathies inspired by a knowledge of the action then contemplated by the cabinet of Madrid, and to-day fulfilled."

You cannot fail, I think, to be favorably impressed by the effective speech of the Marquis of Sardoal. A very young man, and only lately chosen to Parliament, he has at once taken high rank as a debater. A son of the Duke of Abrantes and a grandee of Spain, he is one of the most advanced of the liberal party in this country. The marquis commands the national guard of Madrid. I would especially commend to your notice the telling passages he cites from the record of the Duke de la Torre (Marshal Serrano) and Mr. Ayala, the author of the manifesto of the "league."

Mr. Padial called attention to the transport of slaves from Porto Rico to Cuba, for sale, which he denounced as a violation of law, and asked that orders might be given to prevent the traffic.

Mr. Labra, a deputy from Porto Rico, bore a distinguished part in the debate. The brief sketch of his remarks found in the synopsis translated, may induce you to order the whole of his strong speech put into English for publication.

I need not invite attention to the oration of Castelar. His just fame as an orator will stimulate curiosity to read what he said upon a theme that has made dull men eloquent. Representing the republican party, his novel attitude as an ally of the government gave fresh interest to the occasion. The definite purpose he had in view was to unite the majority of the chamber in support of the cabinet. Much hesitation had been exhibited by not a few of the ministerial adherents. Indeed it was the boast of the "whipper-in" of the slavery party that as many as ninety ministerialists would either dodge the vote or side with the opposition. It was therefore necessary that Castelar, while satisfying the exigencies of the republican leadership, should take ground on which he could rally all the liberals of the chamber—monarchists and republicans. In this sense I cannot too highly praise this great parliamentary triumph. The orator carried the whole house with him. If here and there a few yet lingered in doubt, the enthusiasm of the tribunes and the applause of the chamber swept them along with the torrent of feeling set in motion by this incomparable speaker.

Of course, it is quite impossible, without prejudice to the other duties of the minister and secretary of legation, that justice can be done to these debates in the hurried translations we are constrained to forward. If they serve to convey some impression of the character and tone of the proceedings, the purpose in view in their preparation is answered.

The suddenness with which these questions were precipitated, and the

absorbing interest of the tournament in Congress, found the government, at the moment of its victory, without a draft of an emancipation-bill. If a bill could have been presented on the spot, at the moment when the final vote was announced on Mr. Becerra's proposition, I am confident it would have passed by acclamation. As it was, it seemed as if nothing could be done until after the Christmas recess, it being understood the chamber of deputies would adjourn that night for the holidays. So strong, however, was the desire of a few earnest reformers to lose no time, that the government intimated, unofficially, its disposition to present the bill in the senate on the 23d. You will see by the report of the proceedings (Appendix K) that Mr. Martos, while giving some interesting explanations of the colonial policy of the government with respect to Cuba and Porto Rico, stated that the bill would not be brought in that day. The house having adjourned subject to the call of the president, and the senate having resolved to separate for the holidays, the friends of emancipation would have been disappointed in their hope of prompt action if Mr. Rivero, the president of the chamber, had not called a special session of that body on the 24th in order to receive the bill. It was accordingly read for the first time by the new minister of the colonies, Mr. Mosquera. The preamble and bill will be found translated in Appendix N. The Spanish original is in Appendix O. The benches and tribunes of the chamber were crowded on this eventful day. The reading was greeted on all sides by frequent and hearty signs of applause. As soon as the bill was presented, the allied opposition, represented in the "league," set to work with all the machinery under their control to foment hostile agitation all over Spain. Nor were their operations confined to the Peninsula. Truly or falsely, it was represented that both Cuba and Porto Rico were profoundly and dangerously moved by the action of the home government. All sorts of statements found currency in the newspaper-organs of the "league." It was affirmed that the slaves, impatient of any delay, were about to initiate a servile insurrection and a "war of races;" that the merchants, despairing of any returns from the present sugar and tobacco crops, had stopped all transactions; that the premium on gold and the rates of exchange had risen ruinously; that the planters, so long as the steady supporters of the home government, no matter by whom administered, had resolved to make one last appeal through the "Casino" of Havana for delay, and failing in this supreme effort of loyalty, their next step should not cause surprise, whatever form it might unhappily take. Appeals were not wanting from the Spanish towns most actively engaged in the colonial trade. The wheat-growers of Castile, the olive and wine producers of Andalusia, the manufacturers of Catalonia, the shippers of Santander, Valencia, and Cadiz, were loud in their forebodings of impending disaster to Spanish agriculture and commerce.

Meanwhile the friends of reform were not idle. The constituencies of the senators and deputies who had supported the government sent by telegraph and post innumerable felicitations to their representatives. If, on the one hand, societies and guilds interested in colonial monopolies sent protests, on the other, municipal bodies, provincial assemblies, and public meetings of citizens in the same localities gave abundant evidence of the popular favor extended to the policy of emancipation. These manifestations still continue; scarcely a day passes without a series of these announcements appearing in the official gazette. During the present week great meetings have been held in Burgos and Lerida.

Last Sunday a numerous procession, embracing the members of the abolition society, "The Tertulia," a political club embracing the chief

supporters of the party in power and the "Republican Junta," all of their organizations resembling our union leagues, marched through the principal streets of the capital to the official residence of the prime minister and offered him their congratulations. The leading opposition journal, *La Epoca*, estimates the number of gentlemen in the procession at above three thousand. When one considers the respectability and political prominence of most of the personages taking part in the demonstration, it may well be regarded as a most significant event, that in the capital of Spain so large a number of influential people have found occasion for public rejoicing in the abandonment of the traditional colonial system of the ancient empire, a system which had survived the fall of dynasties and constitutions, which revolutions had left unshaken, and which had defied even the better counsels taught in the loss of vast dominions through a blind obedience to old forms of colonial government. To these imposing proofs of public sentiment must be added those which have emanated from the republican organizations throughout Spain, and which have generally taken the form of addresses to Señor Castelar applauding his action in supporting the reform measures announced by the governor. The republican journals continue to publish, daily, communications of this tenor from various towns.

During the past few weeks the Spanish press of all shades of opinion has had scarcely any other theme for discussion beside the one absorbing topic of the new colonial policy. In Madrid the opposition control the greater number of newspapers. It would not be difficult to explain this circumstance if it had much importance, and to show that not a few of them are rather the advocates of special interests and privileges than the exponents of an impartial public opinion. I had begun to collate extracts from the more prominent papers, intending to forward them for your information, but the result of two days' clippings, confined to a fraction only of the Madrid papers, as shown in Appendix P, was so formidable that I desisted from encumbering the archives of the Department by the formal transmission of data in which the bulk so much exceeds the value. You will appreciate this forbearance by a glance at the package marked "unofficial," accompanying this dispatch, and which contains 400 articles, appearing between the 14th and 25th of December. A persistent effort is made by the opposition journals to represent the remarks of the President relating to Spanish affairs in his annual message as "dictatorial," "arrogant," and "intrusive." The European press, with remarkable uniformity, has taken quite a different view of the subject, generally commending what they characterize as the unexpected moderation of the document. The ministerial and republican organs in this country fail to discover in the language of the President any ground of complaint; and you will be gratified to see that Mr. Martos, speaking in the name of His Majesty's government, evinces a just appreciation of the impartial attitude and the discriminating views indicated by the executive.

I cannot, perhaps, more appropriately conclude this *résumé* of the incidents of the past month touching the development of the colonial policy of Mr. Zorrilla's cabinet than by a reference to the remarkable addresses presented to the King on the 1st of January, 1873, by the president of the senate, Mr. Figuerola, and the presiding officer of the chamber of deputies, Mr. Rivero. You will find them translated in Appendix Q, together with the replies of His Majesty, understood to have been written by Mr. Martos. Up to the moment of the publication of these proceedings at the palace the "league" had cherished hopes that the King would refuse to identify himself with the policy of his minis-

ters. Last June, when His Majesty refused to sanction the proclamation of martial law in Spain, and summarily dismissed Marshal Serrano's cabinet which had proposed the measure, that short and sharp phrase in which the royal decision was announced is often quoted in court circles ; and the opposition had confidently insisted that when the moment for action came Don Amadeo would repeat the famous "*yo contrario*," under which a conservative cabinet had fallen, and the destinies of Spain had been confided to the most advanced party of the revolution of 1868.

Although summoned to the palace with my colleagues on New Year's day, I had not the pleasure to hear these speeches, the diplomatic body having been received by His Majesty at a later hour. I commend to your notice the leading article, headed "*La Crisis*," taken from *El Imparcial*, of which Mr. Gasset y Artime, the retiring minister of ultramar, is director, (Appendix T.) It may be regarded as an amplification of Mr. Zorrilla's statement in the senate and chamber, (Appendices C and E,) or, in other words, an authoritative explanation of the attitude of a minority of the cabinet—two of whom resigned, and the third, General Cordova, holding over conditionally.

Congress re-assembled on the 15th instant. The emancipation act was at once referred to a special committee chosen by the several sections in which the chamber of deputies is subdivided for certain legislative purposes. It is understood that the committee, which includes two deputies from Porto Rico, will report favorably on the measure without delay, and I am assured that the president of the chamber, in the exercise of his authority, will give the bill priority among the orders of the day.

I am, &c.,

D. E. SICKLES.

[Appendix A.]

Extracts from the reply of the president of the chamber of ministers to Mr. Alvarez Bugallal, chamber of deputies, December 17, 1872.

[From La Gaceta de Madrid, December 18, 1872.—Translation.]

* * * * *

MR. ALVAREZ BUGALLAL. As the government must know of the state of alarm that notoriously exists in Barcelona, Cadiz, Santander, Bilbao, and other mercantile cities of the Peninsula, growing out of the rumors lately circulated concerning the intention of the government respecting political and administrative reforms in the colonies, is it prepared to give an explanation of the extent of those measures and reforms at the present moment, since this alarm springs from the profound surprise which has taken possession of the public on seeing the contradictory character of these rumors, some of which are already realized by the repeated promises and statements of the government through its worthy president? Is the government determined, in clear and direct violation, as I think, of the prescriptions of the constitution, and in usurpation of the unquestionable prerogatives of the legislative power, to put into effect immediately, and without the previous approbation of the Cortes, the decree establishing municipal government in Porto Rico, first made public in the *Gaceta de Madrid* of the 14th of this month? Does the government contemplate following up this action by two other measures of equal gravity—one relative to the separation of military and civil power, and the other to the immediate abolition of slavery, which, according to the rumors of the past few days, it is proposed to carry into effect?

These are the three questions I have to address to the government of His Majesty, in order that, in view of their gravity, which I believe it will at once admit, it will be pleased to answer them as soon as possible.

* * * * *

THE VICE-PRESIDENT, (Mr. Mosquera.) The president of the council of ministers has the floor.

THE PRESIDENT OF THE COUNCIL OF MINISTERS, (Mr. Ruiz Zorrilla.) I have asked the floor, Messieurs Deputies, in order to answer a question my friend Mr. Bugallal saw fit to make at the beginning of the session.

* * * * *

What has the government done? Published by decree the law of ayuntamientos, believing that it had the right to do so; believing—and herein is Mr. Bugallal's first mistake—that it usurped the powers of no one, and much less of this Parliament, and how could it have thought of usurping the attributes of the Spanish Parliament, when it so highly cherishes the acts and attributes of that body?

This is an abstract point, and Mr. Bugallal may make an interpellation and present a proposition thereon and say whatever he sees fit as to whether or no the government had the right to establish by decree the law of ayuntamientos in Porto Rico, and the minister of ultramar will answer him.

The government is considering the separation of civil and military authority, (*separacion de mandos*;) and if it agrees upon it, being an administrative matter, it will do it by decree, without asserting anybody's attributes; and Mr. Alvarez Bugallal may make an interpellation about it, if he sees proper, and it will be the second.

The government is considering the question of slavery, and will lay the law before you as soon as possible, for it wishes to fight under this flag and for this cause. It believes that abolition will be the greatest of benefits to the Antilles, and believes there is a way and a means to put a speedy end to the insurrection in Cuba, a measure adapted to the totality of those on these benches, curbing the exigencies of some and tempting the impatience of others—that is, supposing that they have not betrayed their principles, and do not demand an impossible administration for the Antilles. It believes that it has fulfilled its promises in the pacific island; that it has been treated as it ought to be treated, and that, as far as the other is concerned, it will do the same after the restoration of the material quiet and moral tranquillity which is indispensable to enable the reforms to effect their natural results.

Has there been a single Spaniard of any party whatever who has said here, is there any one who ventures to say to-day, in the nineteenth century and in the year 1872, that the Antilles must forever remain under the very same system of laws that governs them to-day? Is there one?

Those who are now and always have been the most inimical to reforms come before us and say, "We are advocates of reforms. We wish and ask for reforms. We wish the colonies to have the same legislation and enjoy the same benefits as may be given to the Peninsula. But this cannot be done now. It is completely impossible to-day. We can do absolutely nothing, because civil war rages in Cuba, and what is done in Porto Rico may make it more difficult to extinguish!"

Ah, what an example! What an immoral example for the provinces which obey and respect Spain! What an unworthy example given by parties who have any self esteem, by men who see nothing left but to sacrifice all, to poison all with political venom! How baleful an example for the rest of the Peninsula if opinions be to-morrow divided and some rebel while others remain tranquil! If there were a rising to-morrow in Andalusia, and if it were possible for it to show the same or similar characters as that which exists in one of the Antilles, would we have to say to the rest of Spain that because there was an insurrection in a part of the Peninsula individual rights must be suspended throughout all Spain? Do you not comprehend that the pacific provinces could justly say that on the whole they would be no worse off if they, too, had revolted? For if the revolt be not dependent on the will of the pacific provinces, and if they find no advantage in their fidelity, but are treated like the others in spite of it, might we not fear that they would do as the others had done?

As firmly as I proclaim it untrue that we have thought of carrying out any reforms in Cuba, so firmly do I assure the Cortes, * * * and my words are trustworthy, for after all the government might easily have postponed its answer, in view of the gravity of the matter, that the government does not and will not go further than it should in the Porto Rican question, and that all that has been said to the contrary and concerning other reforms is the pure invention of some and the foolish credulity of others, unworthy means used by many to attack this government which have overcome great crises and hopes to overcome this, believing that the right is on its side.

What motives are there for the continuance of this alarm if, from the point of view of public order, the situation has been bettered? What reasons are there for thinking that a cataclysm may come at any moment? I will tell Mr. Bugallal why. I will specify no party and no man, because it does not suit my purpose, and in the post I occupy I should not do so except as the last resort. I say to Mr. Bugallal that this alarm is spread because the Porto Rican question is on the tapis; not because the reforms are of greater or less scope; not because they may produce these or those results; not because they are more or less justified or more or less legal; but because it is a question that may serve to rally the enemies of the government and draw waverers to the opposition. It is a question which may lend hope to the feeble and strength to the despairing, and they say among themselves, "Come, let us get up an agitation, and let us see if by that means we can win men over to our side and put an end to this government." Before, it was the conscription; afterward, the loan; now, the Porto

Rican question. If this disappears another will come, and then another, and then another.

One thing is certain; that this agitation will be no more than an agitation; that this agitation would have much less importance if it attained expression in some insignificant overt act than the two revolts we have dominated under more trying circumstances, and there would be, moreover, this fact in favor of the government, that the reform treated of being subject to the deliberations of the chambers, which would give time for opinions to be formed, and for the deputies to vote as their conscience dictates. If this agitation were made manifest in acts of violence it could not claim the disculpation which other agitations have had wherein ideas have contended and not interests; wherein ignorant masses have risen and not men of enlightenment; wherein, instead of making use of what they are worth and what they are to increase the prosperity of Spain and give tranquillity to the Antilles, their endowments and themselves are used for the political ends and to promote discontent at home and perhaps cause great injuries to the colonies; and as such agitation would have no importance we would dominate it as we have dominated the others.

Then, (and why should it be concealed from Mr. Bugallal—why should he not be told the truth?) then, perhaps I might come before Congress and say what I have not said now because I did not wish to add fuel to the blaze, what I did not say when the federal and Carlist insurrections arose, for then evil-minded Spaniards, renegades, and disloyal to their country, would be the ones to arouse a revolt here, and prepare, or attempt, a revolt in the Antilles, in order to deprive the government of the strength it needs to enable it to say to Cuba, "Be not alarmed," to send out thither the twelve thousand soldiers demanded by the captain-general, and as many more as may be wanted. Those evil and disloyal Spaniards would be the ones to say to the Antilles that we had a filibuster government at home; that the government here was composed of wicked Spaniards, of ministers who took money and whose wives accepted gifts from the chief of the rebels. The coward who says this is known as one who is incapable of defending anything unless paid with gold. [Great applause.]

Ah, Messieurs Deputies! when I read this and added it to the countless slanders I have read of myself for some time past I was indignant, but upon reflection I said, "Why should they not do so if their nature is unchanged? Did they not say when Mendizabel attempted to reform the church and sought means to end the civil war, that he took so much for every pair of shoes he bought in England to keep the army from going barefoot? Did they not say of the same Mendizabel that he robbed a virgin's shrine of its jewels to give them to a woman? and, to take an analagous case, did they not say of General Espartero, in 1843, that he had sold Cuba, not to the United States—that was not thought of then—but for British gold?"

And I said, "If, in speaking of a man of the political stature of Mendizabal—almost the only great progressive statesman this country has had—if, in speaking of a man of the virtues, the services, and the merit of the illustrious pacificator of Spain, they said these things, wherein is it strange that, when my limited merits have raised me to the post I occupy, there should be inflamed against me, not merely envy, which I have no reason to fear, but the passions of those of far more merit than I, who, nevertheless, have not accomplished as much as I."

I must say to the chamber and to the nation from this post that we, in studying the Porto Rican question, and in according reforms to Porto Rico, have obeyed the sentiment, the idea, and aspiration of preserving the colonies united to the mother country.

I must tell my political friends from the provinces, who have come hither as commissioners to the government to protest against the reform, that many of them have not been told what the reforms were, while to others they have been exaggerated; I must explain to them that the political aspect of the question lies exactly where they have been told that there was no political question; that the real political issue is that we believe the way to assure peace to the Antilles and preserve them to Spain is to give them reforms, and the reason that those who are themselves politicians tell them that there are no politics in this question, is because they think the *statu quo* should be maintained in the Antilles; that those who knowingly or unwittingly, according to the spirit that guides or the inspiration that feeds them, are content to be made use of by their political friends, may do as they please; each one is master of his own will and conscience; but they contribute to political interests contrary to the radical party and to this cabinet, and we have the right to believe, unless there be some who think and dare to say to our faces that we are not good Spaniards, and then they will have the right to say so, and if they do not we have the right to deem that, as all alike desire the preservation of the Antilles, it is they who are mistaken; that they reason upon the only facts they possess, while we, in studying and deciding this question, have not only the data they have given us, but also those which every government possesses, and which are not accessible to private citizens. They cannot escape from this dilemma; if all of us are true Spaniards—if all of us desire the preservation of the Antilles to the mother country—we are of necessity in the right,

since we possess more data and more antecedents and are able to solve this question more understandingly.

* * * * *

Lastly, Messieurs Deputies, we are acting conscientiously in this question, seeking to give, as I have already repeatedly said, a great good to our country, a great benefit to liberal Spain and to our Antilles; and, as we all hold this conviction, being men of ideas and of convictions, we counsel some of you to examine and see why and how these protests are made, and we counsel others to no longer permit themselves to make a political question of one which should be purely Spanish; that if any issue requires calmness in discussion it is this one, now and always; and lastly, before taking my seat, that, come what may and whatever protests may be made, this government will not desist from carrying out its purpose to realize these reforms except in the face of two obstacles which those whose duty is as ours are bound to respect, the will of the Crown or the vote of the Cortes.

The following proposition offered by Mr. Becerra was then read:

"The undersigned deputies ask Congress to be pleased to declare that it has heard with profound pleasure the words of salvation and of reform from Porto Rico just uttered by the president of the council of ministers.

"Palace of the Congress, December 17, 1872.

"Manuel Becerra, M. Mathet, Luis de Molini, the Marquis de la Florida, the Marquis de Sardeval, Rodolfo Pelayo, Antonio Ramos Calderon."

MR. BECERRA. Gentlemen, these are solemn moments wherein the soul feels what the tongue cannot express. Permit me to begin by congratulating my friend, the president of the council of ministers, on his defense of a great cause. I wish that the Spaniards beyond the seas could hear us, and they would see that the Spaniards who carried civilization thither beneath the cross of Christ are now ready to give them democracy also.

The present act, gentlemen, is an act of great political importance, because, in the first place, it is an act of justice; of justice, gentlemen, which is the highest of all aims, and woe to the nations that forget it! And, in the second place, because it is a timely act, that demonstrates the intimate union of Spain and America, and shows the world that, if a great people has had the courage to emancipate four millions of slaves, the land of the Cid will not go backward in its defense of the liberty, the honor, and the integrity of the nation. [Applause.]

We are calumniated for this; but what of that? To calumny we will oppose tranquillity of conscience, and to intrigues the firm union of our party; for the principles, gentlemen, among their many excellencies, have power to rally their disciples around them at moments like the present, and if any think we are divided, they will now see us united in defense of our principles. And if, by chance of misfortune, we are threatened by complications in this question, we who have ever striven for liberty will continue to strive for it; and if fortune be adverse to us, let us act so that our sons may say of us, "They fought like good men and true to win liberty, and they died like men in its defense." And, above all, let it be known that by this act we test the strength of our right; and if there be cowards who doubt it, we will make them comprehend that we have also the right of strength on our side.

I well know that there are adventurers who have raised their standard against the integrity of our territory; but we will answer them by sending out not merely 12,000 men, but as many as may be needed, and all the treasure that may be required; for a true nation would rather perish from the earth than suffer a blot on its good fame.

There are also those who question our patriotism, but their doubts will be dispelled when they see that, given these reforms, we are ready to make every sacrifice to preserve the integrity of the territory.

The VICE-PRESIDENT. Excuse me, Mr. Deputy; I am about to ask the chamber if the sitting shall be prolonged.

The question being put was decided in the affirmative.

MR. BECERRA. We are discussing reforms for Porto Rico, for that province beyond the seas, which Spain recognizes as a province from to-day henceforth, now that she is ready to give the island her rights as a province, while at the same time prepared to punish rigorously whosoever may seek to assail the integrity, the independence, or the honor of the country. Cuba will have these same rights later, since the first duty is to conquer; because Spain can never yield with honor to menaces, and no man of courage will ever concede that which is demanded with a strong hand.

How much might be said upon this point! How much occurs to me in the way of arguments, showing the justice, opportuneness, the necessity and utility of reforms! But I shall only put this question to the radicals and the conservatives who joined in the revolution: Can we do otherwise than to fulfill a solemn and sacred promise? If it was intended to fulfill that promise, why oppose it now? And if it was not intended that it should be fulfilled, why was it spontaneously made?

I hope that the chamber will take into consideration the proposition we have had the honor to present. In this manner the Spanish nation will prove to the whole

world that she is prepared to defend her independence, to uphold her integrity, to maintain her honor, and at the same time do justice to each and all of her sons; and she will do so in such fashion that the Spaniards who live beyond the seas, like those who dwell in the Peninsula, may say with pride, "I am a Spaniard; I am of that nation that conquered her independence by humbling the great captain of the age, and now is able to teach all Europe the true practice of democracy."

The proposition being put, the vote was taken into consideration, by 182 votes against 7.

[Appendix C.—Extract translated.]

Summary of the proceedings in the senate, December 20, 1872.

* * * * *

Mr. CERVERA. An important political event has just taken place, and as it is the custom of parliamentary governments in such cases to give the chambers full explanations of the causes of the crisis, I simply ask the government to do so now, and to state what are its purposes respecting the political future of Spain.

The PRESIDENT OF THE COUNCIL OF MINISTERS. The government, Messieurs Senators, has intended to explain the ministerial crisis; it is, nevertheless, grateful for the request just made. The causes of the crisis are known to all; so I have little to say on that point.

The government, thinking the proper time had arrived, took up the question of reforms to be extended to Porto Rico. All the members of the ministry were unanimous as to the necessity of promulgating by decree the law of ayuntamientos, which has been published in the *Gaceta*. We agreed to discuss and adopt a plan of action concerning two other questions, the separation of civil and military authority and the abolition of slavery. In view of the gravity of this last question, the government took it up. All the ministers agreed that slavery should be abolished. The dissidence arose as to the manner of doing so, for three thought it should be gradual, and five, among them he who has the honor to address you, advocated immediate abolition. The discussion on this point took place toward the end of November, but it was agreed that while the conscription and the loan were pending the question should be deferred as long as possible.

Sufficient time has now elapsed to overcome both these difficult questions, and the question of public order has been also successfully treated since the federal rising has been put down in all quarters, and we shelter the hope that the Carlist insurrection will terminate in a short time. Such being the situation, the government deemed that the time had come to take up anew the question of Porto Rican reforms. The issue which had divided the government was brought up, and a crisis precipitated in consequence of some inquiries made by a most worthy deputy not belonging to the majority. The president of the council of ministers answered in the name of the government, and making known its situation, but without his language being explicit enough, gave rise to a crisis on the issue concerning which the cabinet held different opinions; nevertheless, those members of the ministry who differed from the majority of their colleagues thought that, in view of the explanations of the government and the vote of the chamber, upon a motion made by one of the majority, that it was their duty not to prolong for an instant their stay in the cabinet, and at the close of the sitting the colonial secretary, and subsequently the secretaries of the treasury and of war, conferred with the president of the council, the two first saying that they could no longer form a part of the cabinet, and the latter saying what he will soon have the honor to say to the senate also.

The question was simple. We were agreed as to the necessity of considering Porto Rican reforms, as to the necessity of publishing the law of ayuntamientos, which we believed we were authorized to do; and as to the abolition of slavery, but we differed, as I have already said, about the manner of doing so.

It is not incumbent upon me to defend, in this place, my own opinions and those of my colleagues who agree with me, nor have I the right to assail those who think differently. When the discussion arises on this point, we hope to convince the Cortes and the country that in treating this reform as we have done, besides obeying liberal and civilized principles, we have conformed also to what was most in harmony with the dignity of the nation, with the situation of the government, with the promises of the radical party, and with the necessity that we should stand before the world as a nation endowed with self-respect, which studies its own issues and realizes its own situation, and whose government will do its duty whatever may be the responsibility.

The question being thus happily defined, it was easy for me to decide in which of the two ways the crisis should be settled. A few moments after the chamber ad-

journed, the colonial minister tendered me his resignation, and, early in the morning of the following day, the finance minister tendered me his. I could do nothing else than to go to His Majesty the King and explain the situation of the cabinet to him, and it was equally my duty, although His Majesty was cognizant of the question from the first, to set before him the full gravity of the issue and the responsibility that would rest on any government that might decide it.

I went to confer with His Majesty at noon yesterday, and told him that a cabinet council was convened for 9 o'clock that night, and that if, at that hour, I had no commands from him in a contrary sense to that in which I thought the crisis should be settled, I would, on the following day, lay before him the resignations of those ministers who were not in accord with the majority of the cabinet, replacing them with proper substitutes. I had the honor and the satisfaction to hear from His Majesty's lips how great was his regret that a new crisis had arisen; but, at the same time, I had the pleasure to hear that, in the divergence of views common to all parties, while esteeming all opinions as sincere, he chose the most liberal and the most humane; and His Majesty charged me that whatever reforms should be attempted should be the work of the Parliament; that the glory of the reforms should belong to Parliament, while the government should bear whatever responsibility might result.

I need not say that my two colleagues who have abandoned this bench were entirely in agreement with the present cabinet in everything referring to the principles and conduct of the radical party and to the necessity of extending reforms to Porto Rico. In these questions the government has to present the proper bills, leaving the co-legislative bodies to deliberate and decide on them; and so it is sufficient for the government to say now that it proposes the immediate abolition of slavery in Porto Rico. A few days ago I had the honor to say in the lower chamber that we had nothing to discuss, since all the ministers were agreed that no political or social reform should be extended to Cuba until it was not merely physically but morally pacified, for without this reforms would have no good result.

You already know, Messieurs Senators, that those who have quitted us, much to my regret—for I realize the great services they have rendered—have done so on this issue of form; nevertheless, the minister of war remains, without, however, indicating thereby that his views have changed, for they are the same as before. Narrow-minded men may judge his action as they think fit; I have only to say that the country is not yet completely pacified; that the recent conscripts are not yet enrolled in the ranks, and that the bill for re-organizing the army and abolishing conscription is still pending. In this situation, the minister of war believes it his duty to continue in the cabinet, although in so doing he makes a great sacrifice, for which I cannot be sufficiently grateful.

The successors of those who have left the ministry are known to all of you; both have been before now colonial ministers, and have been long known in political life. I need not therefore say what their opinions are. Having thus explained the crisis, I must inform the senate that a suitable bill for the abolition of slavery will be presented before the holiday recess.

I do not expose a new programme to the senate. We are of the most liberal party possible in a monarchy. We believe that order and liberty may co-exist in harmony, and that the best way to destroy liberty and order is by the pressure of absolute governments or the vacillation of doctrinary parties. We believe that the doctrines we have proclaimed will lead us to a time when liberty shall be a reality and order be firmly established. But if we are mistaken on this point we are not men to base policy on caprice or egotism. We realize the difficulties that environ us, the spirit of the various parties, and we know who are the enemies that assail us. When it is no longer possible to overcome these difficulties by the course we propose to follow we shall frankly say so; meanwhile we shall keep up the contest and endeavor to win the victory. We recall that before the year 1868 we proclaimed the necessity of the disappearance of the existing order of things and the substitution of a newer and a different state, and we wished the new *régime* to be a reality in law and in fact. Shall we win the victory? It would, indeed, be a grand glory to have confounded those who deny that order can exist in union with the fullest liberties. What if we fail? We shall have fallen with our flag, but none shall say that we have not wrought our principles into laws, or that we have not endeavored to practice them, or that we shall not always hold that our unsucccess is not the fault of our principles but of ourselves, who have not had sufficient means to realize them, or of the Spanish nation, which was not yet ready to comprehend them.

In either case, we must not hesitate or fall short of what we have proclaimed, but keep on in its defense until we succeed in our wish that liberty shall be broad enough for all parties to support within its fold such solutions as may seem best to them, and that the good order so long needed by the Spanish social fabric shall be restored to it.

Mr. Suarez Inclán rose, filled with deep emotion at Mr. Zorilla's words. He was of those who believed that the reforms thus precipitately given to Porto Rico would also be given to Cuba, and that the autonomy to which those islands aspired meant

the loss of Spain's richest jewels. The insurgents were about to attain their ends peacefully and legally with the aid of the Spanish government itself. Mr. Zorrilla had promised before the Christmas holidays to lay his reform project before them. Then they would maintain, hand to hand, the integrity of the nation.

The President suggested that Mr. Inclán was making a speech; not putting a question.

Mr. Suarez Inclán said he would now put his question. Mr. Zorrilla said that reforms were approved in certain high quarters, and this afflicted his (Mr. Inclán's) soul, and induced him to believe the current rumors that the Spanish government had been urged by foreign powers to follow this baleful path. "Was it true that foreign governments exercised pressure or influence on the indomitable Spanish nation? Was it true that the cabinets of Florence, Rome, Berlin, or England used their influence against the legitimate interests of Spain?" [Mr. ZORRILLA: "No; for we are not moderados." Applause and protests.] "Be calm, Mr. President of the council. My opinions are well known. The conservatives of all grades are here to protest in the name of the dignity and decorum of the Spanish nation."

Mr. ZORRILLA. And I also, who represent it.

The PRESIDENT. Has Mr. Suarez Inclán finished?

Mr. SUAREZ INCLÁN. I have finished for the present.

The president of the council of ministers protested against Mr. Inclán's words, which were an echo of outside calumnies against the government. In what act did he find signs of other pressure than love of country and of the Antilles? He thought differently from those who first maintained the *statu quo*, afterward countenanced reforms, and to-day, being no longer in the government, opposed the reforms that were intended to prevent the civilized world from confounding Spain with Turkey and Morocco. [Good! good!] They had something more to do now than to patch up royal marriages or study Spanish interests from a dynastic point of view. Foreign powers could no longer say to our ambassadors that they merely represented the Queen's personal wishes. It was enough for the government to know that its Porto Rican policy accorded with Spain's love for her colonies and with a liberal and civilized spirit.

It seemed that Mr. Suarez Inclán was charged with expressing in the senate the manifesto of the so-called "national league." He had spoken of Cuba, but with what right? Were any reforms proposed for Cuba? Certainly not. "I have said in the house what the conservatives dare not say; I have said what we propose to do in Porto Rico, and that the best way to study calmly what we have to do in Cuba when the war is over is to do what we are doing in Porto Rico; and when reforms are to be proposed for Cuba there must exist not only material but moral tranquillity, without which reforms are fruitless. You have no right, therefore, to prate here of the autonomy of the colonies, or of reforms which do not exist in Cuba."

He protested against Mr. Suarez Inclán's so-called inquiries, which were simply a second edition of the proclamation of the self-styled "national league," which he called the reactionary league. He protested against the charge that they were about to give autonomy to the colonies. The government wished them to remain a part of Spanish territory. As for the second part of Mr. Inclán's speech, he protested that they had not been influenced by foreign pressure of any kind.

Mr. Suarez Inclán said that the senate well knew that he could speak courteously and with circumspection; if he now had lost his natural sweetness and suavity of temper it was because he saw the sentiments and interests of the country assailed and the interests of his province, the Asturias, which were linked with those of Cuba and Porto Rico, now menaced. Through him that principality protested energetically against reforms.

The president said the Asturias was not a federal canton.

Mr. Suarez Inclán said he defended the sentiments of the nation.

A senator. Are not the rest of us defending them, too? [Interruptions on all sides.]

Mr. Suarez Inclán said that the interruptions could not disturb him. Mr. Zorrilla had asked what proofs he had of the interference of foreign governments in Spanish affairs. If it were possible to lay before them the documents in Spanish and foreign archives showing the suggestions, the conferences, and the plots, which did not see the light till after the damage was done, Mr. Zorrilla would not use such an argument. He could not adduce material proofs, but he could show some that were sufficiently eloquent; but the truth of his assertions was based on public opinion, which followed the history of these sad reforms step by step and stage by stage. [Fresh interruptions. The president objected to Mr. Inclán's continuing his remarks. Mr. Zorrilla preferred that he should go on. Many senators demanded that he should be allowed to speak. Order was at length restored and Mr. Inclán resumed his remarks.]

Mr. Suarez Inclán said he could not produce all these material proofs, but he spoke of some. Was the government innocent enough to turn them over to the public? No. But if the proofs of what opinion and the press said and the political world guessed at, the question would be soon settled. Public opinion had divined what lay at the bottom of the matter, and time would show that it was right in its surmise

The immediate abolition of slavery, the municipal law promulgated in violation of the constitution, and the announced separation of military and civil powers were nothing but autonomy; with them disappeared the authority of the supreme Spanish government, which for him signified the immediate and final separation of the islands. A day would come when he could demonstrate the truth of his affirmations. He was the echo of no particular group but of all circles in Madrid, from absolutists to unitary republicans. This was a truly Spanish question, which wounded the most delicate fibers of the national conscience.

The minister of state said that by repeating these rumors and insinuating what could not be proved, Mr. Inclán made a most grave charge. When Mr. Inclán saw fit to speak openly, the government would see fit to answer him. He could speak whenever he liked, but the government was in no hurry to hear him or afraid to meet him or anybody else. Mr. Inclán had complained of not being allowed to speak, but when he spoke it became apparent that he had nothing to say.

"The honorable gentleman hints that there may be documents and conversations showing the reclamations and influence of friendly governments to induce Spain to proceed in some determinate sense in matters which belong exclusively to the Spanish nation; but this cannot be asserted unless based on rational data, and under the obligation to produce them at once; for if not, he who does so fails in his duty as a Spaniard, and forgets that he has to deal with the government of Spain, the guardian of Spanish moral interests and Spanish dignity. [Good! good!]

"I have only to say, in reply to the honorable gentleman's words asserting that there have been such conversations and documents, that there has been no such thing, and that nothing of what he has said is true. He who says this represents at this moment the interests and the truth of the Spanish nation. And if this be not enough for the honorable gentleman, I challenge him to prove the contrary."

It had been said that the English, Italian, and the other governments were interested in the colonial reforms, and especially in wiping out the stain of slavery. Because all the governments of the world think thus, and because slavery is to be abolished in one of the provinces, did Mr. Inclán think those governments forced it on Spain? Wherever there were enlightened statesmen and elevated ideas, there was a unanimous outcry against slavery. What did this show? That Spain, in abolishing slavery in Porto Rico, was influenced by Spanish data and those of the civilized world. But in Cuba nothing could be done except answer the voice of muskets by the roar of cannon.

"Where is the wrong, gentlemen, if in view of all this we should also consider the good opinion that we would win in Spain and elsewhere when it is said, 'The Spanish nation, which has affirmed the rights of man, has crowned her work by breaking the chains of the slaves, making them citizens and free, even in the midst of all the difficulties which surrounded it?' What a glory for the Spanish nation!"

Municipal law was not autonomy. Ayuntamientos had only ceased since certain ideas arose in Spain whose full development would have lost not only Cuba but Porto Rico.

The constitution had not been violated by establishing the municipal law by decree. The constitution said that reforms should be given to the colonies as soon as their condition permitted. In fulfillment of this article each law contained a clause that it should be extended, with necessary modifications, to Porto Rico, and this clause was in the municipal law. The government had not fulfilled that law. Preceding cabinets had operated in Porto Rico by decrees. Mr. Moret did so. In Mr. Mosquera's time the law of ayuntamientos was suspended by decree, and was now re-established in the same way. It was true that what was done in Porto Rico would exert an influence in Cuba, but not in the sense Mr. Inclán supposed. "We have always maintained that our colonial policy was based on this distinction: in Cuba, where there is a war, soldiers and money; in Porto Rico, where there is peace, laws and reforms. In Cuba there will be no reforms until moral and material tranquillity are restored; in Porto Rico, yes; and abolition, which is easy, simple, and not costly there, will be effected immediately, thus avoiding all perturbations and outbreaks. In Cuba, abolition would be more difficult and must be gradual."

All the world except Mr. Inclán knew that what was done in Porto Rico was no precedent for Cuba. It would undoubtedly influence the situation in Cuba to the advantage of the government. These reforms would tend to end the war. The enemies of Spain in Cuba would have a right to doubt the sincerity of reforms promised on the termination of the war if they saw peaceful Porto Rico remaining under the same government as themselves. But seeing reforms in Porto Rico, they could do no less than say, "If we wish to enjoy a better state of things we need not seek it by force, for force has not succeeded; let us lay down our arms and submit to the easy conditions imposed by the victorious Spanish government." For four years blood and treasure had been squandered in Cuba, and yet the war continues. Was it not worth while to try if the example of reforms in Porto Rico and the hope of enjoying them in Cuba would succeed where force had failed? "If this be accomplished, as I trust it will, what a satisfaction and recompense the government will have for all the bit-

terness it now endures and the opposition it encounters from all this conspiracy of interests united to harm it in the name of the integrity of the nation, that talks to us of disputing it hand to hand, when it seems that what is really defended is the lengthening of the lash that tears the negro's flesh! [Good! good!]

"In conclusion, we throw out no hints and harbor no suspicions; the honest policy of the radical party is honestly explained without recourse to arguments of another sort. What we do we do in fulfillment of solemnly contracted promises; for, even as you believe the colonies are lost if we grant them reforms, so do we believe they will be lost if reforms be not granted. Your system has brought about an insurrection which has lasted for four years. Let us now see what ours will do.

"One of two policies must be followed in the transmarine provinces: the traditional policy of military despotism and arbitrariness, incompatible with the new elements which have joined in the new life of the Spanish nation—a policy which I believe would have irrevocably lost the Antilles; or the redeeming, reformatory, humane, and liberal policy which has been accepted by us, the true preservers of the revolution.

"The *statu quo* does not fit with and is a fundamentally disturbing element in our policy; it is immoral and impossible after the pledges of the revolution; and when a nation contracts a pledge before the world it must fulfill it. That there is peace in Porto Rico is due to the efforts of the reformers and to the confidence they have that a day will come when the promises and the obligations contracted by the Constituent Cortes with its inhabitants, in the name of the nation, shall be fulfilled."

Mr. Suarez Inclán said that Mr. Martos's speech reminded him of the siren songs chanted by the American deputies in the Cortes of Cadiz in 1812. Argüelles in 1837 said they had deceived the Cortes, and history has shown that their seductive language had caused the loss of Spain's vast American possessions; and as they had been lost then, so also now—

The president begged Mr. Inclán to confine himself to his "rectification."

Mr. SUAREZ INCLÁN. Ah! Mr. President, this argument hurts. [Cries from the majority; moments of confusion.] This argument hurts, and I must dwell upon it.

The president again called Mr. Inclán to order.

Mr. Suarez Inclán continued, regretting the loss of those vast possessions, and unhesitatingly affirmed that the ample liberties then asked and obtained by the colonial deputies had caused their loss.

(Being again called to order a fresh commotion arose, which Mr. Inclán terminated by announcing an interpellation for some time before the holiday recess.)

The president of the council of ministers said that although the cabinet was awaited in the chamber of deputies to explain the crisis, Mr. Inclán's affirmations were so grave that he had requested the chamber to adjourn till the evening, and would now meet Mr. Inclán on his own ground and reply to any accusation of which he might be the echo.

Mr. SUAREZ INCLÁN. I defend the interests of my country.

The PRESIDENT OF THE COUNCIL. Let us argue this point about "country" and find out what your country means.

Mr. SUAREZ INCLÁN. Country, for us, is the integrity of the territory.

MANY SENATORS. That is not true. We are as Spanish as you.

The President begged Mr. Inclán to explain his interpellation, and not defend the interests of the country, which all were ready to defend.

Mr. Suarez Inclán, although fatigued, was at Mr. Zorrilla's order.

The president of the council, in the name of the government and of liberal and revolutionary Spain, was ready to reply at once to the representative of the moderado party. [Applause.]

Mr. SUAREZ INCLÁN. I am what I am, and the nation shall judge between you and me.

The PRESIDENT OF THE COUNCIL. The nation must judge us all.

Mr. Suarez Inclán continued, saying that Mr. Marto's language was identical with that used in the Cortes of Cadiz. Argüelles had said that the American deputies had victimized those Cortes, and Argüelles himself drew up the article in the constitution of 1837 by which the colonies were made subject to special laws. Municipal law had been decreed for Porto Rico in March, 1870. What was the result? General Baldrich suspended it on his own responsibility. He begged that all the papers in relation to that proceeding should be laid before the senate. When two captains-general of different politics, Baldrich and Gomez Pulido, had refused to execute that law, what was the duty of the government? To study the question to the bottom, impartially and severely. But far from this, they had hastily published the late decree in violation of the constitution, endangering thereby high and sacred interests. This government had paid no attention to those two worthy officers, but published the municipal law, dangerous to the interests of Cuba and Porto Rico.

The finance minister a few days before censured the municipal law of the peninsula, which did not give the government power to compel the town-councils to pay the

schoolmasters. If the government was powerless here, how would it be in Porto Rico, with a provincial assembly of absolute authority? They would appoint all their own officials, judges, and schoolmasters, who would all be separatists. A secessionist judiciary would be a permanent element of sedition, against which there was no defense. "Give me a base big enough," said Archimedes, "and I will move the world." "Give us," say the filibusters, "the primary and higher schools, and the victory is ours!"

The minister of state had said that no reforms would be given to Cuba while an armed rebel remained. He (Mr. Inclán) thought they would lay down their arms as soon as they knew that Porto Rico was enjoying rights almost equal to those in Spain, in a word, liberties, reforms, and rights which, if God did not prevent it, would lose Cuba to Spain. Give Cuba individual rights, with all the consequences seen in the peninsula, and separation becomes a fact forever, for the Antilles once lost can never be regained.

Here, in Madrid, is where the filibusters have their headquarters, their machinations, and their powerful defenders. Ask them if, in giving Cuba the political liberties of Spain, the insurgents of the swamps will lay down their arms, and you will see how they will answer in the affirmative.

The minister said that I spoke of the influence of foreign governments. True. And on this point I wish to put him a concrete question, begging him to answer me categorically. Is it true that in the green book of the United States there is a note from the representative of that Government in Madrid in which is reported a conference with the minister of state, and in which note it is stated that Mr. Martos replied to that representative that, the reforms proposed for the Antilles being once established, the objects and purposes for which the representative of the United States had shown such a lively interest in our affairs, would be realized. I beg that a categorical answer be given me on this point, although I regret to see that the minister of state is not present.

The VICE-PRESIDENT. The colonial minister is here, Mr. Senator. (Mr. Martos enters the chamber at this moment.) Since the minister of state is now here you may repeat the question.

Mr. JUAREZ INCLÁN. I beg the minister of state to give me a full and satisfactory answer to the question I have just put, and I beg the senate to pardon me for the long time I have troubled it. I conclude by raising fervent prayers to Heaven that this unfortunate nation may be delivered from the perils that menace the integrity of her territory. I have done.

The MINISTER OF STATE. Messieurs Senators, as the colonial minister was in his seat I thought I would not be wanted, and asked him to make a note of anything Mr. Suarez Inclán might say about foreign governments.

As for the inquiry Mr. Inclán has made, I reply that, although I had no details, I have already affirmed that no foreign government has made any representations whatever to the Spanish government tending to influence its action on the question under discussion. As for that denunciatory (*conminatoria*) note, I beg him to explain. (Several senators: No! No! not denunciatory!) I beg the honorable gentleman to repeat his question.

Mr. JUAREZ INCLÁN. I said that there was a note from the United States minister, from which it appears that Mr. Martos had stated to him that the Spanish government proposed those reforms; and by that road they would go as far as the Government of the United States wished.

The MINISTER OF STATE. The note to which the honorable gentleman refers does not exist.

While I was minister of the regent, I attended a dinner where Mr. Sickles also was, and we conversed about political matters and the Cuban war, which, as was natural, interested the United States on account of the loss it occasioned to their own and Spanish commerce.

A great misapprehension exists. The United States do not covet the island of Cuba, for it is not their interest to acquire it, and in this relation I must not omit to say that I have always received from General Sickles the fullest assurances that the United States aspire to no such thing. It is true that both the colonial minister and myself, and ten or twelve high officials who were at the dinner, talked about politics, administration, the Cuban war, and our intentions respecting reforms. The papers afterwards, commenting on the United States minister's note to his Government, reporting our good intentions, calumniously stated that I had said that such measures would bring things to pass as the Cubans and the United States representative desired, that is, the emancipation of Cuba.

When I say that neither the United States Government, nor their minister, Mr. Sickles, desire the emancipation of Cuba, I say enough to satisfy public opinion and refute an infamous calumny; and if I had said so of the Cubans it would have been a piece of idiocy, for my loyalty and patriotism spurn the idea. General Sickles's comment meant nothing more than that by such a path we would attain to the desired

reforms, and when he saw what the papers said, he sent me a letter authorizing me to deny it.

* * * * *

As for the remark that the loss of our American dominions was owing to having given heed to the words of their deputies, I must answer him that, in my opinion, it was because of bad government under the absolute *régime*. For this reason we require liberties and reforms, so that all may say with pride that they are Spaniards. To-day kingdoms win nothing by force; what is won by kindness is preserved by love. I have done.

The colonial minister (Mr. Mosquera) said he rose to address the senate for the first time. Mr. Inclán's doubts had been removed by the minister of state, so he had little to say on that point. He would, however, speak at some length of the proposed reforms for Porto Rico.

It was said that reforms would lose the Antilles. If true, the charge was unanswerable. But the premises of the proposition had not been demonstrated. Was the creation of town-councils by restricted suffrage autonomy? Could the loss of the Antilles result therefrom? In no wise.

It was said this decree was illegal and infringed the constitution, that for this reason General Baldrich suspended it, and after him General Gomez Pulido did the same, on the ground that the law was harmful. They were ill-informed who said this. The decree was published in 1870, in General Sauz's time. General Baldrich suspended its execution in consequence of a riot. He was asked to give his reasons for doing so, and replied that there was difficulty in finding skilled men to hold office under it, and requested the government to approve his course. I referred the matter to the cabinet council, General Baldrich's reasons seeming to me worthless, and recommended the execution of the law. It was referred to the council of state. I soon afterward ceased to be minister. General Gomez Pelido had nothing to do with the matter, since the decree remained suspended during his term of office.

There would be no reform in Cuba until the war was over. In Porto Rico there would be a separation of the civil and the military authority; but this was still under consideration, and the bill was not yet prepared. As for the principal question, that of slavery, the institution was defended by none; its abolition was a question of form and time; the time had come to abolish it in Porto Rico, and the slaves would be emancipated there without loss to their masters. There was much anonymous opposition; but when the question was debated in the Cortes they would see what it amounted to. No other reforms than these were proposed for Cuba, Porto Rico, or the Philippines. Mr. Inclán had seemed worried because the towns were to name their dependents and schoolmasters. But the town-councils in Porto Rico were not as free as in Spain, since their president was appointed by the government, and the influence of the government would thus be felt.

Mr. Inclán had said that a majority of the Porto Ricans were secessionists; let him prove it. Not one in ten was a secessionist. The Porto Ricans know they are not suited for a republic, they have no affinity with Cuba, and they do not desire annexation to the United States. Because two hundred men once got up a riot, were all Porto Ricans secessionists? The province was loyal and firmly united to the mother country.

It was said the Cuban rebels would lay down their arms if reforms were given to Porto Rico. He would be glad if the decree could exert such a decisive influence. The rebels had nothing on their side but physical force; Spain had her army and justice. They would not seek independence, but rise to the level of the colonies of other nations.

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Mr. Saurez Inclán said the colonial minister's remarks impressed him painfully. He had thought Mr. Mosquera would carry out Mr. Ayala's colonial policy, as he had pledged himself to do when he entered the cabinet for the first time.

Mr. Mosquera had said that the loss of the American possessions was not owing to reforms. History contradicted him. The American deputies to the Cadiz Cortes were the first to head the insurrection, as also those who begged reforms in 1865 had headed the Cuban revolution. After such terrible experience and disillusionment was it conceivable, that in the year of grace 1872, they should again allow themselves to be hallucinated and taken unawares?

The colonial minister replied to Mr. Inclán's assertion that he was pledged to continue Mr. Ayala's colonial policy, and narrated his interviews with that gentleman. He then reverted to the first municipal law of 1870. Mr. Ayala and General Baldrich were executing it, but it was suspended, on account of a riot, during his (Mosquera's) term. He concluded by saying that the government would not be influenced by the filibusters in Madrid any more than by the slave-drivers.

The Marquis de Barzanallana obtained the floor, and spoke in reply to Mr. Zorrilla's allusion to the moderado party having been influenced by foreign powers, saying that the moderado cabinet had obeyed no foreign influence in arranging the so-

called Spanish marriages. He was profoundly pained by Mr. Zorrilla's declaration that it was necessary to follow a different policy from the moderados to avoid becoming a second edition of Morocco and Turkey. The moderados had always acted with intelligence and prudence. They did not defend slavery in principle. They wanted to treat the question as its immense importance demanded. They did not wish to imitate Turkey or Morocco, but rather Brazil, or England in her treatment of the Irish question. No policy in America had been more paternal than theirs, and this should be proclaimed to those governments whose policy was to exterminate the native races on their soil; whereas the moderados had lovingly preserved them. He thought the discussion of emancipation premature at that time, and would wait till the bill therefor was presented, and then they would see how to settle the important question of sudden liberty to the slaves at a cost of six hundred million of reals, (\$30,000,000.) He concluded by notifying the government to be ready to produce, when called for, all the documents and notes from all the foreign governments relating to the government of the colonies.

The president of the council of ministers replied to the Marquis Barzanallana. The government had not originated this debate. Mr. Inclán, with unwonted vehemence, had appeared as an echo of those papers that for twenty days past had been calling the ministers filibusters. Mr. Inclán had spoken of national integrity, of the loss of the Antilles, of diplomatic documents, and had cited nothing. He had said "If we could only see all the documents, if the country could only have overheard all those conversations between the minister of state and the envoys of foreign powers!" What could the government do but protest?

The colonial secretary had given explanations respecting the present colonial policy which would quiet the apprehensions of all but the members of the national league. All were agreed on the following points:

First. Neither the preceding ministers nor the present sought to do anything in Cuba, either administrative, political, or social, while a single rebel remained in arms.

Secondly. The island of Cuba must be both materially and morally pacified before reforms can be thought of, and if this government is not fortunate enough to hold office when that occurs, it will give its successors the same advice.

Thirdly. So far as Porto Rico is concerned reforms will go no further than the government has said, namely, the law of ayuntamientos, as already explained by the minister of state, the separation of civil and military authority, which has no more importance than that given to it by those whose sole motive is to cast one more stone at the object of their resentment; and the slavery question, which is the chief, not from its difficulties, for we have shown that it presents none, but from the precedent it establishes, and the government has already declared that it will be no precedent for what may hereafter be done in Cuba. We face the issue resolutely and frankly, for we believe that all that we may accomplish for the country, for liberty, and for the dynasty, would be as naught when compared to the memory that would live after us if we fall before a league, national or liberal, or whatever may be its name, formed to withhold liberty from thirty thousand men whose only crime is that their faces are of another color than ours.

Mr. Cervera. Senators, the members of the republican party have waited with great impatience to learn the intentions of the government, and after the rude shock it has just received from one of the minorities in the senate, we cannot remain silent, but must say that we approve the purpose of the government, although we scarcely venture to applaud it, for we are not content with so little, but seek to go further.

Since the revolution no event has impressed me so much as to hear proclaimed from the ministerial bench the immediate abolition of slavery. This is a great conquest. My country begins to be just, and the nations who are strong enough to be just have the right to enjoy all the liberties that prepare the way for their happiness in the future.

The PRESIDENT. A motion which has been presented will now be read.

It was then read and is as follows:

We pray the senate to declare that it has heard with great pleasure the explanations of the president of the council of ministers respecting the causes and the solution of the recent crisis.

"Palace of the senate, December 20, 1872.

"Ignacio Rojo Arias, Enlogio Eraso, Saturnino de Vargas Machuca, Tomás Acha, Vicente de Fuenmayor, Cosme Marin y Vallejo, Rafael Primo de Rivera."

Mr. Rojo Arias supported the motion. He said it explained itself. Mr. Juarez Inclán had taken upon himself to advocate, in the name of the Spanish nation, opposition *ad perpetuum* to reforms in the colonies. This proposition was intended to show the chamber and the country that this question to which a false character had been attributed was simply a political issue, and the expression of the pleasure of the senate on seeing that the crises of a radical ministry were purely parliamentary. In other times only those in the secret knew what a crisis was about. As his object now was to obtain the views of the senate, and, through it, of a majority of the coun-

try, he would not set forth his own views, but simply urge the senate to take the motion into consideration.

The motion was then taken into consideration.

The debate being opened thereon,

Mr. Calderon Collantes approved it. He regretted that it should be brought up now after a stormy and undignified session. So grave a question ought not to be virtually settled by an incidental proposition like this. Was it prudent for the senate to hastily contract an obligation it might have to retract? He begged that the proposition might be withdrawn, and that the government would lay before the senate all the antecedents that had led to their decision, with all necessary documents, so that the question might be studied in detail and not settled off-hand and as a party measure.

All parties felt that the future of the country and the honor of the nation were involved. Personally, he represented no party, and was ready to treat the question, at the proper time, from the elevated sphere of national interests and of right. If obliged to vote against abolition he would not do so because he was a direct or indirect partisan of human servitude, but because the liberty of the blacks might compromise the security of the whites.

Mr. Rojo Arias thought Mr. Calderon Collantes could not have heard the motion read; it did not involve a decision on any matter of colonial policy; all were agreed that the discussion of these questions should be deferred. What he asked was that the senate should approve the settlement of the crisis.

Mr. Calderon Collantes said he opposed it on this ground too; the crisis had been badly adjusted; three ministers should have left instead of two, and he thought of making an interpellation to learn why General Córdova stayed in the cabinet, when he shared the opinions of those who had resigned.

Mr. Rojo Arias insisted on his motion, and thought the course of the minister of war deserved a vote of confidence.

Mr. CERVERA. In the name of my friends, I have to state that, as the reforms in Porto Rico were the sole cause of the crisis, and a vote of confidence is now asked for the government, we, who regard the motion now before the senate as a condemnation of slavery in principle, can, under the circumstances, do no less than add our votes to those of the majority.

The motion was again read and put to the vote, being carried by 51 votes to 5.

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[Appendix E.—Extract translated.]

Summary of the proceedings in the chamber of deputies, December 20, 1872.

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The president of the council of ministers regretted he had not been able to come before the chamber that afternoon to explain the crisis, but the prolonged debate in the senate had prevented.

Mr. Zorrilla proceeded to explain the causes of the crisis in substantially the same words as in his senate speech. (See Appendix C.) Three questions had for some time occupied the cabinet; they all referred to Porto Rico; on the municipal law the cabinet was a unit; on the separation of commands they were also agreed, although nothing had yet been done about it; on the emancipation question they were agreed in principle but divided in form—three being for gradual and five for the immediate abolition of slavery. The latter question was deferred for weighty reasons. But Mr. Bugallal's interpellation, and the subsequent vote of the chamber, determined the crisis. Two ministers resigned. The King urged their continuance in the cabinet, but as the dissidence could not be overcome their resignations were accepted and successors named in accordance with the opinions of their colleagues and the vote of the chamber. The minister of war shared the views of the two who had resigned, but would remain in the cabinet until important measures pending in his office were disposed of. The new ministers had been identified with the most advanced wing of the radical party since the revolution, and had held office in previous cabinets.

The deputies knew what the new cabinet signified, immediate emancipation in Porto Rico; [applause;] and this not by decree, as had been asserted, but by a parliamentary law, for they would not infringe any prerogative of the parliament. [Applause.] What more could the enemies of the measure demand than the liberty of discussing it fully and combatting it openly, instead of merely advocating, without justice or reason, the postponement of a reform demanded by all whose souls swelled with the sentiments of humanity, and who sought that Spain should not become a mark for the jibes and sneers of the nation. [Applause.] The measure must come

before the parliament and be treated by men of enlightenment; men who could distinguish between defending an idea and upholding a fact; between advocating justice and following expediency; between defending the revolutionized Spain of 1868 and the traditional Spain of half a century ago. [Good.] It must be brought before congress to demonstrate that nothing was impossible for governments who would take the initiative, for chambers ready to second them, and for men who, loyal and consistent with the records of their whole lives, who had energy and manhood enough to stimulate their weaker associates, and defy their enemies, to say to reactionary Spain, "we will not go back a single step!" and to liberal Spain, "within the monarchy and the constitution all manner of triumphs and progress may be realized!" [Applause.]

The question of Cuba was completely separated from that of Porto Rico; Cuban reforms were not yet even under consideration. He had before declared, and now he repeated, that this government would attempt nothing, propose nothing for Cuba until, not merely material, but moral peace, was restored. It was unjust to say that reforms in Porto Rico meant reforms in Cuba; and was not only unjust but false to assert that the reforms in Porto Rico would go beyond the declared programme of the government. He said this for the fourth or fifth time, and he hoped for the last time.

This cabinet did not ignore the serious difficulties that confronted it, and the hostile attitude of parties not heretofore hostile to the revolution. But these would be overcome as graver difficulties had been. They found the Carlist insurrection in full vigor, and this had since been complicated by the rising of the extremists. It seemed as if chaos and anarchy threatened them. But the government had kept on its steady course. With the Carlists in arms it had presented and passed the Church bill without any increased alarm resulting. Order had been disturbed in many parts of Spain, but the constitutional guarantees had not been suspended. The government was tranquil in the face of these dangers, because it had faith in the strength of its principles, and sought to serve the country; if the country abandoned them they would quit their posts, but not their principles, and fall with honor. The recent conscripts were now in the ranks, although this had seemed an impossibility; the budget was passed, the Church bill voted, and many other reforms; the Carlists dominated, and all public and secret foes confronted with success. How great a triumph for the government and the radical party if to all this it added the emancipation of 30,000 slaves!

Mr. Zorrilla then adverted at some length to the question of public order, stating his purpose to reorganize the police and penitentiary systems, to inaugurate reforms in the criminal law, and to adopt other constitutional means to restore and preserve order.

He concluded by saying that, with the strength and good will of congress and the country on the side of the government, that everything was possible in the way of the tranquil development of law and reform; and that one thing alone was completely impossible—that reaction and traditionalism can ever take the place of liberal and democratic principles. [Great applause.]

The debate on Mr. Becerra's proposition of 17th (see Appendix A) was continued.

Mr. Estebon Collantes opposed it. He wanted the colonial issue fully debated before the holiday recess. The government had initiated the gravest crisis of the century. All desired the integrity of the national domain, did they not? [Cries of yes!] Then cursed be he who failed to hold his word. The government had raised an issue at once political, administrative, social, and commercial. Was all this to be discussed in one night? No; let it be debated for three days, or three months, if need be. This was not a party question. It was about as proper to call the majority filibusters as to speak of Bourbonists and Alfonsists in this issue.

Mr. Zorrilla's exposition was simply a sequel to what he had said the other day. He then said three things: that the government took up reforms because it was pledged to do so; that it possessed more data on the subject than the oppositions and the nation; and that the country was deeply agitated, and each day brought forth a calumny or a falsehood. The government was pledged to reform. Was this the only reform promised? How about the abolition of conscription, the reduction of taxes, and economies in the Budget? If these were not realized, why not take time to consider the colonial question coolly? The government possessed more data than the country! This was a very grave self-accusation. Why not begin by laying before the house, as other nations did, all the documents relating to this matter? Why not publish all that had taken place between the United States Government and that of Spain? This would have avoided the circulation of unauthorized documents and rumors.

The country was perturbed, and new calumnies arose daily. Was not this liberty one of the conquests of the revolution? His party believed there could be no peace where a government or a monarch could be thus assailed. The radicals called this freedom a boon; let them suffer the penalty. The so-called conquests of the revolution were a calamity, and it was a double calamity to carry them to the colonies. "We (the Alfonsists) do not oppose reforms, for we are reformers, nor progress, for we are lovers of progress; we combat reforms which will cause the loss of Cuba and Porto Rico, and afterward of Catalonia, and after that of Castile."

These reforms were inopportune from a commercial point of view, as he would subsequently show.

The Antilles demanded liberty and reforms. Why not demand of them obligations and duties? They were to be made provinces of Spain? Then away with that costly machine, the colonial office; no minister of Polencia or Oviedo or the other provinces was needed. Then why for the colonies? Why not tax them for the home government and give them the conscription? It was said that their climate and soil and surroundings were different. Then if they were not subject to the same duties they were not entitled to the same rights.

These reforms were inopportune because anarchy reigned at home. The peninsula was a perfect Babel, and to give the colonies the "revolutionary conquests" which had produced this result at home was simply madness. The municipal law was also inopportune, because the captain general of Porto Rico had been summoned home for explanations and the law would be executed by a subordinate officer.

Did Cuba really want the reforms they stood pledged to give her? Did the insurgents seek reforms or independence? There were two parties there, the Spanish element and the secessionists. The latter were in arms; the former defended the integrity of their country. It was said: give liberty to Porto Rico, and the Cuban insurgents will recognize our good faith and lay down their arms, and then we will give them the same concessions as in Porto Rico. But the armed rebels sought reforms only as a means towards autonomy and independence, and they would probably accept them, as in that way they would attain their ends. It was the same as if the Carlists had been told, "To overcome you we will establish absolutism in Madrid, and thus you will see that when you lay down your arms you will have absolutism in the Basque provinces too." This was obvious and conclusive. On the other hand, the volunteers of liberty, the real defenders of our territory against the rebels, are daily more and more dissatisfied with the Spanish government, and are not as active as they would otherwise be in terminating the war, for they realize that when the war is over you will give them reforms, and they do not want reforms; these so-called reforms are a punishment for their virtues; the war will never end; the insurgents will not yield and the volunteers will do nothing; and as you will give no reforms till the insurgents submit, civil war in Cuba will be perpetual under your system. And this proves that you yourselves think that reforms are ill-advised, for if reforms meant peace and prosperity and tranquillity and unity of territory, you would at once establish them in Cuba without waiting for the end of the war." * * * "Were not reforms in Porto Rico and Cuba inaugurated under General Dulce? What was the result? What did Messrs. Becerra and Martos say? They said those reforms were used by the enemies of Spain in favor of secession and that they repented of having established them. This appears in a conversation said to have been held between Messrs. Becerra and Martos and the representative of the United States at this court. In that conversation it is stated that Mr. Martos said that reforms reacted against the interests of the mother country. If this be untrue, why were not the reforms continued in Cuba?"

Mr. Collantes then examined the effects of the municipal law. It permitted foreigners to vote, and it might happen that foreigners might predominate, and then Cuba and Porto Rico would be lost through universal suffrage. It permitted duties on articles of consumption introduced into Porto Rico, and that would ruin the commerce of Castile and Catalonia. Thirty years ago the colonies would not buy Spanish flour; they preferred that from the United States. Castile had spent one hundred millions in improving its flour mills, and now made the best flour in the world. All of this industry would be ruined by the law of ayuntamientos. He concluded by saying, "Loyal Spaniards, as I have shown, do not wish reforms in Cuba; those who demand them are traitors; and you, with the best intentions, are defending a mistaken solution of the problem."

The Minister of Fomento (Mr. Becerra) replied. It was natural for those who thought the revolution of 1868 an evil should oppose reforms. The data possessed by the government relating to the colonies would be made public in due time. It was asked, if reforms be good, why not give them to Cuba? Because reforms demanded by force ought not to be conceded. They did not repent of having given reforms to Cuba, as Mr. Collantes had said; they had nothing to repent of as long as they withheld those reforms. * * *

Mr. Collantes had called emancipation an incendiary measure that would spread from Porto Rico to Cuba. How would it spread? Would the freedmen incite the slaves in the other islands to seek their freedom? No. The slave-drivers had made them less than man, than beasts even, for they had neither property nor family. The tiger might nourish her young, but the infant slave was torn from its mother's breast and sold. How then could it spread? Through the slave owners and the press? Impossible. The insurgents already offered the slaves freedom if they would take up arms. They did not. But a day might come, if the war lasted, when the slaves would realize that they were men with or without reforms, and then would come the real struggle. * * *

Mr. Estéban Collantes refers to a conversation which I do not recall; but I presume that it was one that took place when the minister of state and several other persons met at the house of the president of this chamber, (Mr. Rivero.)

Mr. ESTÉBAN COLLANTES. I do in fact refer to a conversation held in the house of the president of the chamber, in which the ministers of state and public works and the envoy of the United States took part; and in which, according to the published report, it was said that reforms in Cuba had produced results contrary to those expected. If this be not true I have nothing more to say.

The MINISTER OF FOMENTO. I thank Mr. Collantes for his response. I cannot say how long ago this conversation was held; but several of us and General Sickles did, in fact, dine one day at General Rivero's house. After dinner we talked about this already old question of reforms in Porto Rico. The conversation took place before twelve or fourteen persons, and there was no objection to its being heard by all Spain. We said then that the government was disposed to grant reforms to the loyal and pacific province of Porto Rico, which had on all occasions given such proofs of its fidelity, and to take the initiative in doing so, for we would never grant reforms at the instance of a foreign power. We spoke also of the Cuban war which has presented the aspects of a national war, a civil war, and a war of personal animosities inflamed by the tropical sun and climate. I do not remember exactly what was said, but I recall that we did not allude to individual rights, and touched but slightly on the evil return made by the insurgents to General Dulce's generosity. A letter from General Sickles was afterward published contradicting the interpretations given to that conversation. As for myself I have never taken notice of any interpretation that may be given to my acts, and therefore I give no heed to what may be said of the part I took in that conversation.

Mr. Collantes had asked: "Why not give the colonies all the reforms of the mother country?" Had England done so with Gibraltar, Canada, and Sierra Leone. The ground must be gradually prepared beforehand. Nothing would yet be done in the Philippines or Fernando Po. Mr. Collantes had censured the law of ayuntamientos, without recollecting that the Marquis de la Habana (General José Concha) had demanded it for Cuba.

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Mr. ESTÉBAN COLLANTES recurred to the Rivero dinner incident. He said: "I stated that a report had been printed of a conversation between the ministers of state and fomento, the president of this chamber and the United States envoy, and I also said that this incident had led the president of the chamber to write a letter to General Sickles touching this arduous affair. I have therefore concealed nothing." The document to which I refer says:

"Mr. Martos observed here that as soon as the present government came into power they sent General Dulce to Cuba with instructions to make the largest concessions to the Cubans. He granted them liberty of the press, and they used it to denounce the government of the revolution. He recognized their right to hold public meetings, and they employed it to despoil Spain of her territory. It then became plain that what the Cubans wanted was not liberty, for that was offered them, but independence, and that Spain could not yield to force without dishonor.

"I offer these words in proof of my argument, but I have shown the pro and con of the question and concealed nothing."

* * * * *

The MINISTER OF FOMENTO. I shall reply but briefly to Mr. Estéban Collantes's statements. The document he has read confirms what I said. Cuba may need reforms on a greater or less scale, before or after Porto Rico; but the flag of "Death to Spain!" has been raised there, and this cry could not be answered otherwise than by preparing for the combat. What did Mr. Martos say to General Sickles? That some reforms had been essayed, that the enemies of the country sought to make use of them, and that, in consequence, they could not do otherwise than fight. My own private opinion, gentlemen, is that a dictatorship would be the best means of speedily ending the war, for there are occasions in which dictatorships are not merely useful, but necessary.

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Mr. Ramos Calderon said he would say but little, as it was nearly 1 o'clock, and the chamber must be tired. This was not a time for argument, but for feeling, when the liberty of 30,000 slaves was proclaimed by the prime minister. No more important event had happened for a century, save the United States liberating their four millions of slaves, and the convention under Danton freed the slaves in the French colonies. He then replied at some length to Mr. Collantes's remarks, touching the action of the cortes of Cadiz, the influence of colonial reforms on Spanish industry, and the inequality of the *status* of the colonies and of Spain. Could any situation be sadder, he said, than that of an enlightened citizen of Porto Rico who travels in foreign lands, who comes to Congress, and who is free everywhere save in his native island. Even during the reign of absolutism, the laws and organization of the peninsula extended to the colonies; now that absolutism is over, the reign of liberty should be extended to them. And these reforms would be at once given to Cuba if it were not cowardice

to do so now. He concluded by saying that the ten deputies from Porto Rico had not proposed these reforms to the radical party, but had simply urged the fulfillment of existing promises. Even if those deputies were not here, the radical party would have fulfilled its pledges. The principle of reform had been guaranteed in the constitution framed without the concurrence of colonial delegates. Their fathers had freed Spain from the yoke of the great captain of the age (Napoleon,) and the sons now added their mite to civilization in freeing the slaves.

General Gándara (formerly captain-general of San Domingo) spoke against reforms. His own experience in the colonies showed him that some of these reforms were unwise. No Spaniard who had been across the Atlantic did not return of the same opinion as those who form the Spanish party in the colonies. The only republican deputy who had been in Cuba, Mr. Villergas, had spoken the other day against reforms; and the only member of the late cabinet who had been in the Antilles had provoked the crisis. All partisans of radical reform were inspired by patriotism, and so were those who might differ from them in some respects. No one could oppose the abolition of slavery, for example. He (General Gándara) had been a reformer since 1848. But he objected to the form of the municipal law now given to Porto Rico. It restricted universal suffrage and gave the town-councils autonomic powers, restricted suffrage, eliminated the most healthful and most Spanish element in Porto Rico. Why not rather leave universal suffrage and restrict the powers of the ayuntamientos? The law attacked the principle of authority and left the governor no means of governing. It might be needful to limit the governor's powers, but he should have enough left to enable him to execute his mission. Another transcendental reform was the separation of civil and military commands where they had never been separated hitherto. This also grievously wounded the principle of authority.

As for the slavery question, he was an abolitionist. But why liberate 30,000 slaves from impulse, and maintain 600,000 in bondage from motives of expediency? The same motives of expediency militated against the untimely emancipation of the 30,000. They ought to be free if they could be freed without risk. Moreover, sudden emancipation could not be accomplished by the mere command of the governor when he receives the law. He will have to make "regulations" and take time for its enforcement. It was better to study the measure here maturely than to leave it to be studied afterward in Porto Rico. He concluded by saying:

You tell us that you only treat of Porto Rico and not of Cuba until not merely peace but moral tranquillity be restored. Well, then, I tell you this: if Céspedes, on witnessing reforms in Porto Rico lays down his arms and begs that the same reforms be given to Cuba, will you tell him that it is impossible, because moral order is not restored?

And by what means will you restore it? Will the arguments you have employed and the antecedents you have established lead you, against your will, to give the same reforms to Cuba. Can you maintain there a municipal and provincial autonomy? If reforms be established in Porto Rico submission in Cuba is inevitable, for they are too shrewd not to embrace the opportunity, and they will say: "We are at your orders; give us the same advantages you have given Porto Rico." Go on, then, and give them the means of organizing their forces and preparing for an immediate and triumphant revolution; and you will be forced to endure the humiliation of defeat without even winning the gratitude of those you have favored. * * *

The discussion was here suspended, and the house adjourned at a quarter before 2 o'clock.

[Appendix G.—Extract.]

Synopsis of the proceedings in the chamber of deputies, Madrid, December 21, 1872.

[From La Gaceta de Madrid, December 22, 1872.]

The sitting began at 1.15 p. m.

Mr. Padial said the transport of slaves from Porto Rico to Cuba was prohibited by law except when they had relatives in the latter island, and then only at their own desire, and in legal form. This law had been frequently evaded hitherto. He asked the colonial minister if orders had been given to positively prevent this traffic, now that emancipation was about to be proclaimed in Porto Rico.

The Secretary said the question would be communicated to the colonial minister. Several other questions were asked when

Mr. Labra presented two petitions praying for the abolition of the death penalty and slavery.

The order of the day was then entered upon and Mr. Becerra's proposition was taken up.

Mr. Ramos Calderon rectified an observation made by General Gandara the previous day. They meant to free thirty thousand slaves in Porto Rico because the island was fit for the measure. General Gandara had said Cuba would soon be pacified. When that happened they would free the remaining six hundred thousand slaves, and thus in God's name blot out slavery on Spanish soil.

Mr. Nuñez de Valasco replied briefly to Mr. Estéban Collantes's speech of the previous night. Mr. Collantes had said that the interests of Catalonia and Castile were bound up with those of the Antilles, and that their flour trade was in danger of utter ruin. He wished to reply as a deputy for Castile. He thought Mr. Collantes labored under a grievous error fraught with terrible consequences to Spain and the Antilles, if he and his partisans regarded the colonies as mere sources of profit, and to be worked as such. If Spain's prosperity lay in her trade with the Antilles, it could only be kept up by making the Antilles entirely Spanish, identical with the mother country in aims, feelings, language, rights, and laws. One province could not be privileged and another enslaved without grave perturbations. Privilege engendered pride, and oppression rebellion. It should be borne in mind that the same waves that rolled Spain's hymns of freedom to the Antilles brought back to her the groans of slavery, and that, while Porto Rico was peaceful, her slaves should be proclaimed men, and not left to realize that they were men, and not to fight for manhood and freedom.

Mr. Estéban Collantes said that they were not discussing slavery; it was a side issue, brought in to divert attention from the main points, and had nothing whatever to do with Catalonia's commerce or Castile's flour.

Mr. Nuñez de Valasco said they were discussing colonial reform. Mr. Collantes looked at these solely from the point of view of expediency and not of justice. The provinces of Castile had sent delegations to confer with the government; all had asked colonial reforms. In all Castile there were not two men who thought as Mr. Collantes did.

The Marquis of Sardeval spoke in favor of the proposition. This was the most important issue since the adoption of the constitution of 1869. It was not strange that the separate groups of the opposition should unite against it; some opposed it with consistent adherence to their traditional principles, while others now denied the creed they accepted when the "conciliation" was framed, showing that they had then accepted it for ends of personal expediency. The question was grave, but none should fear to grapple with it on that ground, had not the constituent cortes met and decided far graver issues? Silence should no longer be allowed to give consent to an assumption that they did not feel confidence in their own freedom, and doubted its efficacy in the Antilles. [Good, good.] It would argue debility not to accept the gauntlet now thrown down, and the victory would assuredly not be with those who sought to stifle the right under the mantle of much patriotism. Mr. Collantes had concluded his address by telling the story of a bad actor, in times of absolutism, who, to avoid being hissed from the stage, closed all his speeches with the cry, "Long live Ferdinand the Seventh!" but up thought a parallel to this actor was to be better found to-day in those who wound he their barren arguments with the cry of "Long live Spain!" [Good.]

The municipal, provincial, or financial organization of the Antilles was not under discussion; the real issue was that of slavery. It was said that no one defended slavery in the abstract. But they were not discussing it in the abstract. These were the tactics of the opposition; they accepted abolition in principle, but rejected it in form; they accepted reform, but denied that the time for reform had come. Those who thought twenty-five years ago that there was no obstacle to emancipation within a period of twenty-five years, now that the period is past, hold that the time for such a measure has not come. It was incredible that those who had so recently voted the constitution of 1869 should now deny its principles. In fact they could not discuss its principles now; conservatives and radicals adopted it in common, and must support it together; the only issue was the manner and time of carrying out its precepts.

The orator then drew a parallel between the electoral coalition of April, 1872, and the present league. The motto of the former, he said, was the purity of the ballot; of the latter, slavery. It was most fortunate that this issue had arisen to draw a well-defined line between rival forces. [Applause.]

He complimented General Gándara on the good sense, earnestness, and prudence of his speech, which might be summed up as an argument to show that colonial reforms were dangerous, and contrary to the opinion of the country. It had been said that reforms, however just and necessary, could not be attempted, because the Spanish party in the Antilles opposed them. Men of all parties, there, only remembered their nationality. All alike cried, "Long live Spain," and all were resolute in combating reforms. Was the intelligence of the Spanish race like the magnetic needle, that lost its fixedness in certain latitudes? Did the liberal become an absolutist on reaching tropical climates? If this were so, he would never cross the seas for all the gold in the bosom of virgin America. But it was not so. Ideas attained a collective force that commanded obedience, even though opposed to individual convictions. Only thus could it be explained how the slaves submitted to the lash, and how armies obeyed their chiefs' commands and enforced submission on their mutinous comrades. This was

the case in Cuba. Some Spaniards go thither to seek their fortune, others to practice a liberal profession, but most of them to hold government office. What happened to those who did not sport the badge of the volunteers? The lawyer found no clients, the merchant found no custom, and there were influences powerful enough to remove the employé, unless all joined in the general cry. An old anecdote would illustrate the situation in Cuba. An illustrious poet, being asked why he had become a brother of the holy inquisition, replied, "I had rather be the cook than the chicken."

It matters naught to me that the Spaniards in the colonies do not wish reforms. The constitutional convention did not consult the Carlists or the moderados when it gave Spain the liberties guaranteed by the first chapter of the constitution. Here, and here alone, must we and the government seek our inspiration; and if, perchance, the government should be swayed by other suggestions and other motives, and I believed the partisans of reform were in a minority, I, a radical, would counsel my friends to abandon these seats. [Good, good.] But fortunately this is not the case. Congress is the true representation of the country, and should alone determine the course of the government.

Why are reforms perilous? Must they result in the loss of the colonies? I recall how often it has been said that the patriotism and valor of the volunteers, with the concurrence of the Cortes and the nation, are enough to prevent the rebellion from triumphing, and how I have heard it said that the rebellion was crushed, and that the bands remaining in the swamps were bands of outlaws; but, if it be true that the volunteers are ready to sacrifice life and treasure to prevent the plucking of the rich gem of Cuba from the diadem of Castile, do you believe they will be against us when reforms are extended to those regions? It would be the same as saying that the patriotism of the volunteers is mainly interest. And, as I do not believe this, from this place I say to the volunteers that they have officious friends here who do them grievous wrong in supposing that they will renounce their defense of the integrity of the nation if reforms be accomplished. [Applause.]

The orator then cited the past record of Mr. Ayala and General Serrano. After the battle of Alcolea, Mr. Ayala said: "The revolution we have effected is so great, so mighty, that the limits of the peninsula cannot contain it, and its beneficent effects reach beyond the seas. Liberty goes out to the colonies, and their representatives shall come hither, who shall be deemed our brethren and shall have an equal part with us in the government of the nation."

And in 1867, when the moderados were in power, the Duke de la Torre, (Serrano,) captain-general of Cuba, freely and without pressure, made a report to the colonial minister, Mr. Castro, in which he said:

"I have been led to recognize, and I can do no less than say to-day to Her Majesty's government, with all the loyalty of my character and impelled by my most intimate convictions, that the complaints of the Cubans are just, that their aspirations are legitimate; that there is no reason why they, Spaniards like ourselves, should have no press nor any voice whatever in the government, nor even one of the constitutional guarantees to which we of the peninsula are entitled; that there is no reason why a military and absolute government, from the highest to the lowest in the scale, should be the sole rule in the Antilles; and that now is the fitting time—and let not the government forget it—to take advantage of the internal and external circumstances that favor the political reform urgently demanded by the Spaniards in the colonies, and which it is just and proper to grant them without delay.

"As for the domestic government of the island of Cuba, the extent of its territory makes it indispensable to divide it into several provinces, in order to avoid an excessive centralization prejudicial to all interests. The island was formerly divided into three departments, * * * but it seems to me that the increase in its population justifies the division of the island into six provinces, which I have heard recommended by many Cubans, and which would be Havana, Pina del Rio, Matanzas, Villaclara, Puerto Principe, and Santiago de Cuba. There is no reason whatever why these provinces should not be organized in conformity to the 'Laws of the Indias,' before cited, in the same form and manner as those of the peninsula, with their provincial assemblies and councils, the former being chosen conformably to the electoral law which may be established for deputies to Congress, and the latter nominated by the superior civil governor from a list proposed by the assemblies, seeing that such appointments by the supreme government offer difficulties that will readily be appreciated. Each province should have a government without military command, as in the peninsula; and, in order to secure able men, natives of the island and familiar with its needs, it would be better that they should be named, or at least proposed, by the superior governor."

With respect to the most important issue, the slavery question, General Serrano said:

"And hence the most salient among all the questions is that of slavery, an unfortunate heritage which, always a moral evil, is to-day the source of most serious perils, both domestic and foreign, which menace our transmarine provinces, and compromise the dignity and the peace of the Spanish nation. Thus it was seen that the Duke de

la Torre declared in 1867 that the honor and tranquillity of the nation were compromised by slavery. And why should they not now deem that the present situation of Cuba was due to their disregard of these foreseen counsels?" [Marks of approval.]

And afterwards he says:

"It is a question of humanity, and under the pretext of humanity we are ever menaced, and more and more day by day, with a disturbing and humiliating foreign intervention, so long as we maintain slavery in our transmarine possessions."

That was to say, (the Marquis of Sardeval continued,) that no other reforms could be attempted until slavery was abolished. The Duke de la Torre thought so at that time, and the radical party could not afford to be less prominent than he in conceding reforms. He continues:

"In England, in France, and also in Spain, there are anti-slavery societies, which are steadily gaining in the public opinion, for the motto of their standard appeals to their sympathies, and they will end by exerting an irresistible moral influence. Let us make haste to work to the same end with freedom and prudence, lest the current of abolition come to-morrow and sweep us away with it, overwhelming all interests alike, without the guidance of reason and without any possible compensation for the slave-owners."

There was an argument that seemed to be the Antilles argument of the question. It had been asserted that white labor was impossible in those regions, but on this point also the Duke de la Torre dissents from the common opinion. He says:

"On very many plantations in Cuba, and especially in Porto Rico, the erroneous idea has been dispelled * * that the whites could not stand field-labor in tropical climates, and since their aptitude for such labor has been demonstrated, the first duty incumbent upon those of us who are interested in the prosperity of the Antilles, is to favor white emigration thither by all possible means, white labor being the most profitable system, and the only one that offers no perils in the future, and to prohibit absolutely any other race whatever."

The Marquis of Sardeval concluded by congratulating the government and the nation on the firm ground it had taken in defense of reforms, of justice, and of right. [Applause.]

General Gándara replied briefly. He had been a consistent advocate of reform before the Marquis of Sardeval was born, and was still. He did not know whether the object of reading from the record of Mr. Ayala and General Serrano was to show that they contradicted themselves, but he was sure those gentlemen would continue to defend those views, and if they did not, he (Gándara) would defend those views on his own account. But it was easy and popular to defend the slave in the regions of the ideal, just as it was difficult and unpopular to seem to defend slavery even on practical grounds. He was as good an abolitionist as the Marquis of Sardeval; they only differed as to the manner of abolition, gradual or immediate. The black race, for which the United States and the French convention had done so much, was ungrateful. The convention decreed them freedom, but in doing so it decreed the extermination of the whites. What was the present vocation of the Haytian negroes? According to General Ghebrard, their President, 350,000 of the 700,000 inhabitants of Hayti belonged to the secret society of *Boduc*, an anthropological society, which stole, sacrificed, and devoured children. This was a fact, and had come under General Gándara's own observation while governor of San Domingo, when twenty-four child-eaters had been executed by President Ghebrard's orders. Give sudden freedom to such a race and they would relapse into barbarism. This was the result of the exaggerated philanthropy of the convention.

Slavery was abolished in the United States against Lincoln's own desires, for he had thought to end it with the close of the century, and its speedier abolition was due to a war which ruined the country and imposed the hardest laws of war on the conquered. The South still groans under those laws. He had already shown the distinction between Cuba and Porto Rico with respect to reforms. There were two parties in Porto Rico, and insurrection was latent there; but Cuba was in a state of war, and he deplored that a Spanish Congress and government, inspired by a grand ideal, should so grievously err as to decree reforms which would favor the rebels in Cuba.

General Gándara closed by alluding to the Marquis of Sardeval's dread of crossing the seas lest he should lose the sentiments of liberty. This was not so. The sense of liberty was not lost, but that of patriotism was strengthened. So certain was he on this point, that he would willingly agree to accept the marquis's views if the latter would make the voyage and judge for himself.

The Marquis of Sardeval was glad to hear that General Serrano and Mr. Ayala held the same views now as they did then.

Mr. Alvarez Bugallal opposed the motion. He had risen from a sick-bed and come thither in order to "pulverize a miserable calumny." He had been accused, secretly and openly, of having connived with the president of the council in making his interpellation of a few days before—of being Mr. Zorrilla's accomplice in a shameful

farce! He "fulminated his scorn against such calumnies," and abandoned them to the contempt of the chamber. His alarmed patriotism impelled him to make his interpellation, and he would have addressed it to any ministry whatever under similar circumstances. The ministry had taken advantage of his interpellation to precipitate a crisis, which fortunately had shown that the radical party was divided upon an issue in which the government now claimed to represent the whole party, and even now one of the ministers refused to follow the rest in the pathway of perdition. This demonstrated that it was not a party issue, but a national question, affecting the integrity of the country.

What changes had taken place since Mr. Zorrilla made his elaborate declaration that the policy of the government in Cuba and Porto Rico would be the policy of the Cuban volunteers! That declaration, which had re-assured the minds of all, was seconded by Mr. Mosquera, who proclaimed his purpose to follow the policy of his predecessor, Mr. Ayala. He, who was now the chief paladin of reform, in 1869 denied that slavery was what it was alleged to be, and had again and again maintained that not a single reform could be given to Cuba and Porto Rico until material pacification should be followed by moral tranquillity. In this very Congress Mr. Zorrilla had answered Mr. Sanromá and opposed immediate reforms. Mr. Bugallal then added:

"I cannot bring myself to believe, for the honor of my country, that the words of the message of the President of the United States could have had any direct influence upon the course of this government; but I tell the minister of state that, in view of such a declaration, I would have completely refused all reforms, and would never have permitted a foreign government to mark out for me not merely the path of the immediate abolition but also that of reforms."

Here Mr. Bugallal read extracts from the President's message.

"I leave it to the judgment of the house if, immediately upon this publication, it comports with our national dignity to undertake colonial reforms at such a time. When a foreign government dares to designate a specific question as a cause of perturbation in a Spanish province, and to indicate a specific solution and the necessity for adopting such reforms, it is not the time for a proud and dignified nation to undertake them."

Mr. Bugallal then argued that the *status* of Cuba and Porto Rico was identical socially, and that no discrimination could be made between them. A powerful secessionist element existed in both islands. Spanish liberties could not be extended to possessions where such ideas obtained, and where open enemies of Spain sought those liberties in order to conspire against her. The commissioners of 1867 had practically demanded Cuban independence by recommending an insular congress with power to vote their own budget. They were now rebels, and all the rights enjoyed by Spaniards were about to be put in their hands.

Mr. Bugallal then examined the municipal decree of Porto Rico. It gave the towns power to elect their alcaldes without governmental intervention; this privilege had worked great evils in Spain, and they would be worse in the Antilles. The schools and the clergy were under the control of the town-boards, whose moral influence was thus unlimited. The town-boards could levy taxes on articles of consumption, and if inimical to Spain—as they would be—they could exclude Spanish products and favor those of the United States. Worst of all they could arm a militia to fight against Spain. The decree was also unconstitutional under the 108th article, which limited the power of the government to proclaiming the municipal law of the constituent Cortes. And none of these grave evils were to be lessened by conceding a provincial assembly, and separating the military authority from the civil. On this point he had nothing to add to what General Gándara had said the day before. He concluded by saying that no one opposed abolition, for all were abolitionists by reason of being Christians and Europeans. The question was, should it be immediate or gradual? The former was dangerous and unconstitutional. The only safe path lay in the direction of slow, gradual, and steady reforms for the colonies. The inexperience of the liberals of 1812 and 1820 had caused great losses for Spain. If the lessons then given were unheeded, the remaining portions of the land of Columbus would be irreparably lost.

Mr. Labra supported the motion in a most eloquent speech. He would say but little, the chamber was fatigued, and all were impatient to hear the eloquence of Castelar. But as a deputy from Porto Rico, he must reply to the attack lately made on the representation from that island. He and his colleagues represented the desire of the island for the termination of the *statu quo* and the concession of the reforms promised by the revolution. They represented not merely the liberal party of the island, but almost the whole population. They sought reforms constitutionally and through the action of the nation. They were accused of impatience and of disturbing public tranquillity, of avoiding public debate on the subject, and of being actuated by selfish motives. They had remained silent, however, for three years, awaiting the consolidation of the work of the revolution and a Cortes that should represent the liberal voice of the nation, knowing that when such a time arrived, reaction in the colonies would no longer be possible, and as Lincoln said on emancipating four millions

of men, "it was impossible that a people should be half free and half slave." But the time had come for them to speak in behalf of the needs of the island. The Porto Rican deputation had sacrificed many individual views in order to reach a common and homogeneous accord. Some desired perfect assimilation with Spain; others, himself among them, sought colonial autonomy; but all had agreed to ask no more than what was promised by the constituent Cortes. They did not come to defend theories, but to demand the fulfillment of the laws, first, because these laws met the needs of Porto Rico, and secondly, because there was nothing more disturbing, more immoral in the life of a people than to leave laws unfulfilled, and through neglect or malice to convert a code into a dead letter. They demanded nothing more than obedience to the 108th article of the constitution, which provided that the government of the Antilles should be reformed as soon as deputies were present from Cuba or Porto Rico. And, therefore, they demanded, not colonial autonomy, but the fulfillment of the 3d and 4th articles of the two laws of June, 1870, which directed the government to promulgate them at once in the colonies. They asked the fulfillment of the 21st article of the preparatory abolition law, which promised a definitive law of abolition, with indemnity for those left in slavery by the law of 1870.

Those laws were not now under discussion. The Porto Rican delegation had not framed them. They were framed by many of those who to-day combated them.

He well knew what was the Achillean argument of those who opposed the execution of those laws in the Lesser Antilla. "All of us," it was said, "are partisans of reform, but with discretion, and at the proper time. All of us agree that reforms will work no harm in Porto Rico. The abolition of slavery is easy there, and political reforms will encounter but few obstacles. But the fact is, that whatever is undertaken or done now in Porto Rico anticipates what is to be done in Cuba, and we must not fall into the snare spread for us and reach Cuba, against our will, by the path of Porto Rico."

From the time Mr. Labra first took his seat as a Porto Rican deputy until now, he had frankly maintained that the Cuban issue was not one of mere force. It was, however, sought to mystify the issue; to reach Porto Rico by the path of Cuba, and to withhold reforms from the lesser island under the pretext of the situation in the greater one. Under cover of this they were asked to deny and renounce for the colonies all the conquests of the revolution. Such a course meant national dishonor and suicide.

Porto Rico's record was loyal. She had resisted the secession movement of Latin America in 1822, and fought for Spanish integrity in the war of Santo Domingo. Till 1837 she had had the same laws and municipal government as the peninsula. It was false that a secessionist party existed there. The Lares affair was a mere riot; it was unjust to condemn the whole island therefor.

What was the prime need of the island? The abolition of slavery. When, in 1866, Porto Rico was consulted for the first time as to her wants, she begged for abolition, for she felt herself unworthy to ask for her own liberties until she had given freedom to her slaves. And since that time her deputies had deemed it their first duty to demand the emancipation of the small and lessening number of slaves in that island. In this they had been ably seconded by their constituents, who, dissatisfied with the incomplete law of 1870, had since voluntarily manumitted many of their slaves. The die was cast. The colonial issue was now defined. "Liberty to all!" was their rallying-cry.

Mr. Labra then recounted the history of the peace of Amiens, by which the slave-trade was revived and the slaves already freed were re-enslaved, thus precipitating the tragedy of Santo Domingo, which was in no wise the result of abolition. The dying exile on Saint Helena was haunted by the memory of this act, and the curse of *Toussaint l'Ouverture* would forever rest on the dynasty of Napoleon.

He concluded by saying:

"Forward, radicals! Forward, men of September! Our work is just, and must redound to the welfare of the country. Henceforward we can close our opened arms to none because they think differently from us. It is impossible that there can be Spaniards and anti-Spaniards in the Antilles instead of conservatives and liberals. No; those islanders may dwell with us, free as in the United States, expansive and quivering with life as in South America, and happy as in the English West Indies. Together with us they may tread the path of the future and of humanity, for there is room for all parties—republican, monarchical, radical, and conservative alike—beneath the standard of Spain; and all shades and tendencies of opinion may dwell in the august bosom of our fatherland. I have done."

Mr. Castelar then delivered a thrilling oration in favor of the measure. His speech, translated from his own revised manuscript, will be found in Appendix H.

The MINISTER OF STATE, (Mr. MARTOS.) The speeches made against this proposition made a reply necessary on the part of the government; but a partial reply has been already made by the minister of fomento last night. You have just heard, deputies, the oration of Mr. Castelar, who is already fully aware that it is not because of my personal affection for him, but because I share the opinion of all those who have had the

good fortune to hear him, that I regard him as the first orator in the world. It is an honor for Spain that the most inspired accents heard in the whole world are uttered by a Spanish deputy, and are born in and spread abroad from the Spanish tribune. A great obligation rests upon the government in this debate; but under the present circumstances it cannot discharge it. The same thing occurs, gentlemen, in the moral life as in the physical life: when we journey on, oppressed with weariness and thirst, through desert sands, it is not possible for us to pass far from the cool spring that slakes our thirst, and when we are in the midst of darkness it were vain to hinder our eyes from drinking in the radiance of the light that shines through our gloom; and so, also, it were vain for me now to seek to enchain your attention. But I cannot, deputies, omit to make a few remarks in reply to certain phrases of most serious import uttered by Mr. Bugallal.

"The debate is closed. Mr. Castelar has spoken the last word; the slaves in Porto Rico are already free! [Great applause.]

"The law of abolition to be submitted to you by the government is the form by which we are about to realize this grand hope, but is the form and nothing more, since the inspired utterance of Mr. Castelar, which will be legally corroborated by the vote of the parliament, in reality is the final consecration of the liberty of those men henceforth.

"The senate yesterday was the scene of a great debate. Interests which I respect lifted up their voice then and there against reform; but the vote of that body was the same as the vote of this chamber the other day. The Spanish chambers have spoken. The abolition of slavery in Porto Rico shall soon be an accomplished fact. [Prolonged and repeated applause.]"

But from whence do these reforms spring? I regret to have heard from the lips of a Spanish deputy that the purposes of this government, which, in fine, represents the dignity, the high bearing, and the independence of the Spanish nation, and the votes of the two chambers do not respond to the inspiration of our consciences, to the necessity of discharging solemn obligations we have publicly contracted, but that they are due to the dictation, to the menaces, perchance, of some foreign nation. No! No one can believe this, no one has the right to say this; and these words of Mr. Bugallal's have prompted me to rise and dispel the shadow which seems to linger in his mind.

Mr. Bugallal did not say, as it has been said, however, elsewhere, that we propose the abolition of slavery because we are forced to do so by England and the United States; but the honorable gentleman has regretted that this project of reform should have coincided with certain utterances in the message of the President of the United States.

Well, then, Mr. Bugallal is doubtless unaware that the ministerial crisis brought about by the measure which has given rise to this debate took place in the bosom of the cabinet toward the end of November last, and that the Congress of Washington was opened the first Monday in December; consequently, when this government had already resolved to extend reforms to the island of Porto Rico, and when its resolve to grant them was so firm that, because it would not recede from this path, it had to undergo the bitterness of losing several of its members, the message of President Grant was not yet read, and, perhaps, not yet written. Let Mr. Bugallal therefore give no heed to this coincidence, let him rejoice at it as a good Spaniard and understand that if there has been any influence at work it is more likely that the knowledge of this purpose of the Spanish government (which I, as minister of state, knowing the applause it would receive from all Europe, took good care to communicate by telegraph to all the world) may have led to the substitution of approbation for censure, and that, perhaps, to the knowledge of this intention it is due that the President of the United States has said what no President of those States has ever before said in speaking of Spain and Spanish governments.

Neither has Mr. Castelar any cause for alarm. He need not fulminate the invincible bolts of his eloquence against the opposition of the military aristocracy. Our worthy generals are not elements of discord nor instruments of reaction, either in America or in Spain. Our army, which is pouring out its blood in defense of the integrity of the country, would welcome with applause a peace that would end this cruel war; and there is a way of ending the war in Cuba otherwise than by the melancholy means of extermination, for extermination will never end it; and the time has come for the army of our soldiers to make room for the passage of the impatient army of our ideas.

It is not true that we have no minister of war now; neither is it true that we would have none if we were to suffer the misfortune of losing from our midst our worthy General Cordova, whose patriotic and honorable course was so justly lauded yesterday by the president of the council. If General Cordova should one day abandon this bench, we would have a minister of war.

But the time for voting is at hand, and "the government demands that the ayes and noes be taken. Would to God all party views might be merged in the sentiment of patriotism and love of Spain! And know this, deputies, this most laborious parlia-

ment can give its labors no more glorious coronation than to decide now, in principle, and to-morrow when the law is before it for discussion, the immediate freedom of the slaves in Porto Rico." [Great applause.]

Mr. Lasala obtained the floor and asked that certain extracts from the debate on the "Labra proposition" of 1871 should appear in the official reports of this day's proceedings, which was accorded.

The proposition submitted by Mr. Becerra being again read, and the ayes and noes thereon being demanded, it was approved by 214 votes to 12.

The chamber adjourned at a quarter past seven o'clock.

[Appendix H.]

Speech of Emilio Castelar in the chamber of deputies, December 21, 1872, in favor of the immediate abolition of slavery in the island of Porto Rico.

[Translated from the verbatim report corrected by Mr. Castelar.]

MESSIEURS DEPUTIES: I trust the chamber will pardon me if I begin my address by reading a few paragraphs from previous speeches of mine, which are necessary to explain and justify my personal position in this debate.

On the 20th of June, 1870, the most essential of the issues before us, the slavery question, was under discussion as it is to-day, and I then uttered the words I now deem needful to read to the chamber: "In the revolution of September there were two motive forces, one analogous to the French movement of 1830, the other analogous to that of 1848. The radical and conservative parties believed they had signed a compact in the constitution of 1869, whereas they had simply signed a truce; they believed they had found a common channel in which to mingle their currents, whereas they had in reality but found a new field of battle whereon to measure their strength."

And afterward, when I was combating the first imperfect law, the product of a coalition, I proposed that it should be replaced by a radical law, and I spoke these words: "Your law is not a law of charity, it is not a law of humanity; your law aggravates the evils instead of curing them. When the cancering sore is deep, palliatives are of no avail; a cautery is needed. And the cautery is to be found in the amendment I have the honor to propose to you; it is to be found in the immediate abolition of human bondage."

Three years have passed, deputies, and the immediate abolition of slavery is now proposed in this place, and will be presented to you through the initiative of the government at an early day. And now I ask of you, I ask of all those of honest conscience, can any one be surprised at my personal attitude in this debate? Nevertheless, deputies, I do not speak of my own will and choice; although I might have invoked these precedents in support of my course, I have hitherto refrained from speaking because I do not seek to reap in politics an egotistical satisfaction; the triumph of principles and the good they may bring to the people can alone satisfy me. I do not speak of my own will; I speak because of exigencies—nay, more than exigencies, I speak because of commands; nay, more than commands, I speak because it is the authoritative will of the republican minority that I should do so. Those who hear me well know that, although in other legislatures I have spoken, perhaps, too often, in this Parliament and in this term I have not even broken silence.

Grave misinterpretations have elsewhere been given to this silence, inspired, in my judgment, by an exalted sentiment of patriotism and by the highest convictions of justice; grave misinterpretations whose wave shock has been withstood by the firm serenity of my conscience, and which have been lost in the just oblivion of public opinion. Subsequently, eminent deputies, of all the conservative parties, some of whom now hear my words, and others of whom, unfortunately for themselves and for us, are now absent from this place, spoke to me of my silence, and urged me to break it, employing terms of admiration which I attributed to affection, and which show how eminent orators illuminate all by the reflection of their speech, and how great minds raise all to the level of their own merit. I shall speak, gentlemen, and perhaps I speak discontenting all alike. [I shall speak of the policy of the government, of the fulfillment of its engagements, of the situation of the party that forms the majority of this chamber, of the nature and tendency of certain elevated powers, of the attitude we maintain, of the prudent conduct imposed upon us by the hazards of our country and of the complications of European policy; I shall speak of all this when I can do so without harm to liberty or democracy or federation or the republic; ideas to which I render fervent homage with a rare constancy not much in favor in these latter days, when new comers are accustomed to control at their own pleasure, the fortunes of the older parties. [Great applause.] A constancy I shall never be led to abandon by

ingratitude nor slights nor threats nor calumnies, because I do not cherish ideas of federal republicanism to please any one or to serve the whim of the multitude; for those ideas are incarnate in the fibers of my whole being, and will be the inseparable companions of my existence until the very hour of my death.

Having said this much, I now enter on the subject of the debate. The republican minority has voted in favor of taking under consideration the proposition for a vote of thanks to the president of the council for his utterances respecting colonial reforms. The republican minority will vote as one man for the approval of this proposition. In voting thus, the republican minority does not give its vote to a monarchical party; its vote is inspired by its own conscience and by its own principles; it means to adhere to the steadfast pole of its ancient doctrines. And if it chances that the government and the majority are with us in such an issue, even as in those days of sorrow, now passing into oblivion, in which we combated a traditional monarchy, an intolerant church, and a census which drove the people from the ballot-box—even as in those days we did not pause to reckon the number of our foes, so neither do we now count the number of our friends when it is sought to embody here and give to America the principles of liberty and of justice. The republican minority has heard a cry to which it can never be deaf, the cry of reforms already promised—already given, as it were—to long-oppressed peoples, victims of military despotism and bureaucracy, who, more than all others, have need to breathe the air of modern life; peoples who are flesh of our flesh, blood of our blood, bone of our bone, offshoots of our own soul, an integral part of the national domain, the essence of our country, having a right to our own rights, and who—if when emancipated proved ungrateful and turned against the nation that recognizes and proclaims their right, against the parliament that gives them and has also power to take them away—would merit the wrath of our justice, the condemnation of the civilized world, and the eternal curse of history, wherefrom lies no appeal. [Boisterous and prolonged applause.]

Another question, deputies, of the utmost importance, still remains. As I have said, we advocated, in its good time, the immediate abolition of slavery, and we advocated it, not in order that our names might resound through the world, not as an academical theme serving as the frame-work for the display of mock sensibility, or whereon to hang the baubles of our rhetoric; no! We advocated it as an exigency of universal progress, and as a duty toward our country from which we could not shrink. It is hard, indeed, to confess that beneath the skies flooded with the radiance of liberty, and darkened, too, at times by tempests; beneath the shadow of your constitution whose first articles amplify the rights guaranteed by the descendants of the Puritans to the peoples who founded the great American Republic—there still subsist thousands of unhappy creatures, things rather than men, instruments of the work and wealth of others, feeling in their brain the generous warmth of human nature and in their conscience the ignominy of the brute creation; who bear on their foreheads the helot's brand, on their backs the pariah's scars, and on their feet the fetters of the slave; a race anterior to the revolution, anterior to Christianity itself; it is a crime which should be done away with, to-day rather than to-morrow; for we should be unworthy to frame within our own minds the conception of right, and to stand forth before history as the defenders of liberty, if we should suppose that the strict fulfillment of duty and the realization of the purest ideas of justice would redound to the injury of our country. [Repeated applause.]

Ah! deputies, the republican minority seeks and desires this, absolutely, happen what will, come what may, for it is justice. And moreover it seeks and desires this because, like all acts of justice, it is also of the highest political expediency. However radical we may be, however rationalistic we may appear, however independent may be our desire to hold our own ideas of every circumstance of time and space, none of us will deny that a deed of the first magnitude in history descends as a legacy to all time and is inherent in all ages to come.

To Italy belongs the æsthetic education of the human race, for Italy is the mother of the renaissance; to Germany belongs the scientific education of the human race, for Germany is the mother of the reformation; to the United States belongs the political education of the human race, for they are the honored sires of republican federation; to France belongs the revolutionary initiative in Occidental Europe, for France is the mother of the revolution; to England belongs the principal of constitutional stability throughout the continent, for England is the illustrious land of parliamentary rights; and we, Spaniards, are, have been, and ever shall be the mediators between the old and the new world, between the old and the new continent; for we, our heroes, our sailors, our navigators, created rather than discovered between the Atlantic and the Pacific the new land of America, to be, from the very commencement of the modern epoch and the new birth of the genius of civilization, a living monument of freedom, and form with its splendid horizons and the beauties of its bounteous soil a worthy sanctuary for the spirit of modern times. [Applause.]

It matters little, very little, deputies, that the greater part of political and material ties that linked us with America have been severed. The Spanish race, from the sim-

ple fact of being Spanish, is essentially American, and the Americans, from the mere fact of being Americans, are essentially Spanish. Seward, for whom modern democracy mourns—Seward said on the conclusion of the American war: "Spain will forever be an American power." And Lincoln's prime minister had a just title to represent in history the entity of American integrity. It matters little that the ancient bands that united us with America have been broken. For, is the state the country? Is the government the country? This would be indeed a paltry conception of country. Country is the origin from which we descend, the race to which we belong, the cradle wherein we were rocked, the fireside that throws over our lives the golden haze of its poesy, the temple which inspired us with our earliest hopes, and wherein our first prayers arose like clouds of incense; and language, that embodiment of the ideal, that speech of the soul; all this is, and will be, and can never be otherwise than essentially Spanish in America. And if they revile us, they revile their own selves; if they curse us, they curse their own selves; if they are renegade to us, they must deny us in our own tongue, the most beautiful, the most sonorous, and the richest spoken by man in the modern world, [applause,] and which is as the golden ring enamelled by the genius of so many minds, with which the spirit of Spain is wedded to the spirit of America, and the spirit of America to the spirit of Spain, to all eternity, on the pages of past and future history. [Applause.]

I regret, deputies, I deplore that a great part of the illustrious conservative party is absent from this place, for I am an enemy to all acts of violence, as I abundantly showed when the conservative party occupied the government bench and I this seat. And, addressing only the conservatives here present, I say to them, never put your faith in any American question; never put your faith in the doctrines of the conservative school. Did you not observe how a parliamentary orator, of such translucent mental power, such far-sighted intelligence, and such incisive eloquence as Mr. Estéban Collantes—be not offended with me—how inferior to himself he appeared last night? Did you not remark Mr. Bugallal, whose gigantic intellect is imbued with all modern ideas, how he hardly seemed to grasp, and how he scarcely explains the issues in America? It may be, although I doubt even this, that the conservative school may prove adequate to the needs of the aged monarchies of Europe, but the democratic policy and the democratic school are alone capable of fully comprehending the young democracies of America. Do not be offended; in foreign nations men as illustrious as you have fallen into the same error. The English whigs and tories, when the war, accursed of God and man, broke out in the Southern States of the Union, believed that the miracle of modern history was about to be destroyed; they believed that the American confederation was about to pass away, and they declared it even in the House of Commons; an error for which they had to pay with the salutary and sublime humiliation of Geneva. A man as eminent as you, one of our most illustrious jurists, went to Mexico as the ambassador of the Spanish nation; he arrived, delivered his credentials to all those who represented the reaction, and on his return entered the senate and said, in the year one thousand eight hundred and sixty two, that within five years a chain of constitutional monarchies would stretch from the Potomac to Patagonia. No; pardon me the seeming presumption, when I say that none but we republicans can grasp American questions. We said that Buchanan was preparing the way for the insurrection of the South, and he prepared it. When Lincoln passed, almost a fugitive, fleeing from the savage Missourians, who sent hired assassins to attack him on his way to the Capitol at Washington, where martyrdom and immortality awaited him, we said that he would find himself compelled to put an end to slavery, and he was compelled to put an end to it. In those terrible days, when, on the banks of the Rappahannock, fourteen thousand republicans like ourselves fell in the battle of Fredericksburgh, in the holy cause of the emancipation of the blacks, we said: "Forward! Forward! for triumph is yours;" and they triumphed. When, in our own country, there appeared insensate reactionary tendencies, we predicted in our journals the perils of such tendencies, which of themselves explain the difficulties and stumbling-blocks of the present situation. When it occurred to the great diplomatic minds of Europe to set up the shadow of an empire on Mexican soil, and when the poor victim of the errors, the ambition, the injustice, and the perjuries of kings, set out on his journey to America, we said in our papers, you will find it written there, "The fate of Iturbide awaits thee; thou thinkest that thou goest to find a throne, but thou goest to find a scaffold!" Why? Why is this, gentlemen? It is because the spirit of the future is ours, and the spirit of the future is the spirit of America. And we, who possess this spirit of the future, now proclaim to you that the denial of reforms, the maintenance of slavery, the imperial rule of your captains-general and of your bureaucrats, will lose you Cuba and Porto Rico, and that they can be alone preserved through our reforms and our principles. [Applause.]

Gentlemen, the republican minority has charged me to say, and I say it unhesitatingly, that, with the ardor with which the republican minority loves all its principles, and with the faith and loyalty with which the republican minority believes all its doctrines, it desires and believes to-day that the integrity of the nation is needful and

indispensable, at whatever cost, in Asia, in Africa, in Europe, and in America. [Applause.]

We do not desire this from an egotistical and narrow sentiment of patriotism; we desire it from a humane and universal principle of justice. Spanish America, independent America well knows to-day, thanks to a recent experience and recent warning examples, that she need fear nothing and has nothing to fear from the European continent.

Nevertheless, in the same manner as suffering spurs individuals to action, so rivalry and necessary competition spur nations onward. Although the dread of European intervention is at an end, there are, assuredly, great rivalries of race in the bosom of America herself. As the globe is condemned to endure the warfare of species, so is history condemned to record the rivalries of races. And there may chance to be some one race, perhaps there is, which, justly filled with the pride of its prosperity and the spirit of its principles, may seek to occupy upon the American continent a wider field than that assigned to it by Providence and by nature.

The Spanish race knows that to oppose this war is unnecessary; that, fortunately, wars are on the decline wherever democracies rule. The Spanish race knows that two problems remain to be solved; the problem of their domestic and the problem of their foreign policy. The problem of their domestic policy is to be solved by ceasing to assume that democracy is a simple and unique principle. The same thing happens with the social elements in political economy as with the Aristotelian elements in science; they were believed to be simple; they have turned out to be compound.

In the social system, as in nature, we need complex elements. We are asphyxiated alike in pure oxygen and pure carbonic acid. Democracy is liberty, but it is also authority; it is a movement, but it is also stability; it is action, but it is also a curb on its own action; it means the rights of men, but it also means discipline and social authority. [Applause.]

The American democracy comprehend this, and thus they employ their strength in allying right with authority, and the mobility, the initiative of the masses with the tranquillity, the solidity of the peoples, and with the firm establishment of popular government. And when those internal problems shall have been resolved, and almost everywhere they have been resolved, the Spanish democracies of America will then consider that they cannot live in isolation; that each one of those States must come to an understanding with the rest. And thus will come forth again the grand idea of Bolivar. In the Isthmus of Panama, having Europe on one side and Asia on the other, and at either hand the two hemispheres of the New World, the Spanish race will unite to form on that ground the grand league of the Spanish American democracy, to found their free confederation. And our children of America will call to mind that, though the fact that some are called Mexicans, others Argentines, and others still Colombians, sets up a dividing line between them, yet the fact that all are Spaniards fuses them together as one. And over the congress of the Isthmus of Panama will hover in visible forms the genius of our country, with a mightier authority than that which our ancient captains wielded, the authority of reason and of right; and with a brighter glory than that of fragile conquests, the glory of democracy and of progress. [Stormy and prolonged applause.]

But to this end, deputies, we must preserve at any cost, what? the continent? No. The American continent lives, and will live, in perpetual independence. We must preserve the islands now in our possession. We do not wish, let it be understood the world over, we do not wish to annex an inch more of land unless it be the inch of Gibraltar; we wish no more. I repeat, then, what belongs to us, the inch of Gibraltar; we do not want an inch more of land; but on the other hand we will not have an inch less, not one! we will not even abandon so much as the Rock of la Gomera. [Good! Good!]

And I will tell you why I desire the maintenance of all these territories. The spirit is not only individual, it is also national. Nor is it national only, it is likewise a spirit of race; and not only is it a spirit of race, it is the spirit of a continent, of a world. And not only is it a world spirit, it is a human and an absolute spirit. And I avow that geography itself yields to this spirit. This land, so solid, yields to ideas as the soft wax to the seal. And in the geography of humanity, in the relation between races, peoples, and continents, it is fitting that there should be spots of ground to stand out as middle terms between peoples, races, and continents. This condition of things has always existed in history. Rosillon, Sardinia, Languedoc, Provence, were in the middle age mediating territories between France, Italy, and Spain; and from that mixture of races, that blending together of spirits, arose modern culture, which in many respects is better, on the shores of the Mediterranean at least, than ancient Greek culture.

Until within a short time Alsatia fulfilled her destiny between the Latin and the German races. What a drawback for the world if we should have to renounce the hope that Alsatia will yet form a part of the French nation once more! The Alsatians were born Germans and French at one and at the same time; Germans by their race,

Frenchmen by their nationality; they knew the two languages as languages only can be learned from the cradle; they translated works of the Latin genius into German and communicated them to the North, and they translated the works of German genius into French and communicated them to the West. How great a loss in chemistry of ideas if Alsatia should have to be perpetually Germanic! That very thing has come to pass in Savoy. The Savoyards are neither French nor Italians, they are both. For that reason Cavour was enabled to transport to Italy the genius of France, because he felt the soul of Italy and the soul of the French nation unite in himself.

Gentlemen, that which happens to peoples and races must of necessity happen with continents. This very morning I looked with pride, so to speak, on our beautiful possessions in the Antilles, and involuntarily came to my mind that loveliest of Grecian archipelagos where the genius of Asia was espoused with the soul of Greece, and thus became a middle term between the most illustrious portions of the ancient continent. Looking at the Antilles, I said to myself: How these islands are moving away from the American continent and are drawing nearer to the European. Why so? Because these islands are indispensable mediators between the genius of Europe and the genius of America. This idea is mine, although its basis belongs to one of our greatest statesmen. I have noted that just as we Andalusians represent the artistic genius of the country, the Aragonese represent its political genius. On that account they have preserved their liberty so long; on that account when you go to Aragon and behold the defenders of Sarragossa you discover that those marvels have been wrought because two centuries of despotism could not extinguish the personal dignity that gave them their great parliaments. Hence the most illustrious men of our nation are: Pedro the Third, the greatest of his time, the greatest politician of the thirteenth century; Peter the Cruel, the greatest politician of the fourteenth century; Ferdinand the Fifth, the greatest political genius of the Renaissance, according to Machiavelli, and confirmed subsequently by all history. Well, the count of Aranda and Aragonese likewise desired to bring Spain into the circuit of modern ideas, and for a time succeeded in his desire. He was like his age, encyclopedist, and he said to Charles the Third, "It is not possible to preserve the American continent; let your majesty convert those great empires into so many states, and reserve to yourself the islands exclusively."

Here, gentlemen, is the foresight of genius, inspired in the ideas of its time and confirmed by a succession of facts. The continent cannot, ought not, to belong to us; we must renounce absolutely all idea of European reconquest on the American continent, and we must keep the islands, because they are the hidden reefs on which are reared the light-giving beacons of our ideas; because they are the golden chain which unites continents; because they are destined, when federations between peoples and races shall be no more, to serve as landmarks to map out the federation of continents, the political aim of the human race. All the nations that have chiefly contributed to the transformation of America have islands in the sea of the Antilles, witnesses of past struggles, bases of future elaborations in the work of civilization. Some belong to those nations of the north who claim to have been the first to divine the existence of the new continent, and to have landed tempest-driven upon its unknown strands; others to those who, passing the sea in order to extend themselves farther, and attaining their liberty in order to enlighten themselves, contributed to establish the amplest mercantile relations in the modern world; and some belong also to that vast empire whose sons founded the colonies that were the first to become republics. Some belong to that nation which discovered large portions of the territories of the north and engraved on the map the bay and river of Saint Lawrence. Italy has none, in chastisement, perchance, of her blindness to the genius-flame on the brow of her most illustrious son. And we have the most beautiful, the richest, and best located portion, the key of the Gulf of Mexico, the grand station for the traveler from the Northern to Central America. We have labored so much in the New World that, as a great orator has said, if the Pacific and Atlantic should join their tides and swallow up America, leaving only the highest crest of the Andes above the waters, there, on the crest would still abide in giant petrification the genius of our country! [Great applause.]

The PRESIDENT. Pardon me, Mr. Castelar, the hour of adjournment having arrived, the house must be consulted as to whether the session shall be prolonged.

The SECRETARY, (Mr. Lopez.) Does the house agree to a continuance of the sitting? [Yes, yes.]

The PRESIDENT. The sitting is continued. Go on, Mr. Castelar.

Mr. CASTELAR. No; our relations with America can never come to an end. Spain needs to amplify them and stretch them still further, in order that she may not only be the extreme of the old continent, but the beginning of the new. Thus her spirit will broaden in the earth, and her genius will have incentives worthy of its vigor. But, gentlemen, to this end one thing is necessary; to this end Spain must be action and not reaction, liberty and not arbitrariness, justice and not privilege, abolition of slavery and not the eternal rule of the slave-driver in the most beautiful part of the planet. That we may speak the truth, let us possess that frankness, that energy, that

manliness possessed by the wise, the good, the immortal Lincoln by the blood-reddened Potomac, when men fell at his feet like harvest-swaths, when the northern cavalry pursued Lee while the artillery drew near to Richmond, that Babylon of slavery, and he, a second time the elected of the people, ascended the Capitol, and, gazing on all those ruins, seeing the smoke of those burnings, and hearing the wail of the mothers, mingled with the groans of the victims, said, "Yet, if God wills that the war continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago so still it must be said, 'The judgments of the Lord are true and righteous altogether.'" [Applause.] And if Spain, gentlemen, if this nation we all love so well, and for which we would all lay down our lives, if Spain is to be made up of arbitrary generals, greedy bureaucrats, selfish tax-gatherers, censors who stifle human thought, unbridled hosts massacring children, the slave-trafficker's bark, the Babylon of the plantation, and, to crown all this, the bazar and the slave-market, ah! then, arise with me and cry, Accursed be the genius of our country!

But, deputies, does Spain signify these things? Are they Spain, forsooth? Then, what do all our labors represent? And you, the radical majority in this place, I speak to you without flattery, because a day will come wherein I may also have to tell you bitter truths, what are you but the most liberal expression of the law-giving power that our country has known since the beginning of the century? Why, is not Spain to-day the sovereignty of the people, universal suffrage, individual rights, democracy, the whole of the spirit of the age, in fine? And will you deny modern ideas to that America where modern ideas have assumed their most fitting form and most natural organism? Of what avail, think you, are the slave-traders' doubloons and the flour-barrels of those millers of whom the ever utilitarian *moderado* party told us yesterday? Of what avail are such things as these before the boundless ocean of modern ideas?

Would you be more arbitrary than the men of past ages? Our fathers are calumniated by those who say that they carried to America a narrow and selfish spirit. No, it is not true; such might have been said by those illustrious leaders who fought for their independence; they might have said so in the intolerant spirit common to all those who defend a new principle against antiquated ideas, in the intolerant spirit shown by St. Augustine and the fathers of the church towards paganism, and by Voltaire towards Catholicism. But history says another thing; history says that our viceroys were wise men; that our council of the Indies was a model council; that our colonial laws were the most humane and the most far-seeing of all the colonial systems of that age; that the Catholic priest himself, with that democratic spirit whose essence forms the ground-work of the church and constitutes its glory, protected the Indian, sheltered him from the wiley assaults of the white man, built up in him a conception of human personality, and an idea of the immortality of the soul, forbade him to lend his treasure to his conquerors, and even permitted him to govern himself by means of his caciques, and to mingle with his half-learned orthodoxy the heresies inspired by nature. The sixteenth century carried thither what we ourselves possessed, carried thither our great captains, our heroes, and our explorers; the seventeenth century carried there our own theocratical, hierarchical, and monarchical organization; the eighteenth century carried modern ideas thither; the constituent assembly of Cadiz gave them the spirit of democracy; the latter half of the nineteenth century, with incomprehensible injustice, has not extended our own modern and democratic spirit to our possessions; but the present is a solemn hour; to-day is the last day of old Spain, crushing in her fall the fetters of the slave, and the birth-day of that other Spain that by the means of her ideas unites herself indissolubly with the America of freedom, of democracy, and of right.

Ah, deputies, what is there to oppose to all this? nothing, save the interests of a few slave-holders; and how can the modern world permit these slave-holders to oppose us with more strength and greater right than all our civilization?

Much has been said about foreign influences. How is this? Does it happen in this present century that the constraint of foreign powers is needed before justice can be done? Why if, when the telegraph, steam, and the press, were unknown, the nations all obeyed one common idea, do you now wish that one common impulse should not control the present generation?

There are, gentlemen, two nations which form the two extremes, the two poles of human society, the one is Russia with her former serfs, the other is Saxon-America with her once-called slaves. Russia believes her mission is to civilize the Orient, to civilize the primitive world; Saxon-America holds that she is the civilizing agent in the Occident, the regenerator of the New World. Russia, against the protests of her nobility, abolished serfdom in 1861, and America, at the same time, abolished slavery against the armed protests of her ruffian slave-drivers. On the 4th of March, 1861, Lincoln went up to the Capitol, and on the 5th of March, 1861, Alexander read the decree proclaiming the emancipation of the serfs. When Russia renounced her predominance in Europe, when she renounced all the complications of the Eastern question,

when she renounced all her influence in the West, all the while she was realizing the abolition of servitude, and when the genius of democratic America put two millions of men under arms and raised half a million cavalry, laid waste her own fields, destroyed many of her own cities and sacrificed her own sons without number, do you, perchance, imagine, deputies, that all these deeds were not to have an influence upon our social system and our country like that of the moon upon the earth and of the earth upon the moon? Here there is not, there cannot be, and there shall never be, any question about foreign dictation. What this means, and it could not be otherwise, is the influence of the universal spirit of mankind.

And now I say to you, deputies, I say to you that you must at all cost and with all speed fulfill your promise, for the words "immediate abolition" can in no wise be uttered without at the same time accepting immediate abolition as a fixed fact. What! could you, could this chamber, can this government repent of its plighted word? It is impossible! Military threats, far from intimidating you, are an incentive to spur you on to its more speedy fulfillment. [Applause.] The military aristocracy may say what they like, especially when there is no minister of war to answer them from his seat. But do these illustrious soldiers think that they can countervail democracy as much as they have aided it? Do they think they can oppose the right as successfully as they supported it? Are they about to say again to the revolution of September, "Back! for beyond my sword's edge thou canst not go?" I would answer them, No! your swords were our humble servitors; your swords were the providential instrument wherewith to work out our ideas. [Applause.] We respect your military position, for it is glorious, but on condition that you respect our political power, for it is legitimate. [Applause.] We do not legislate in the barracks, we legislate in the halls of Congress. [Applause.] What we decree, shall be law for the Spanish and American provinces alike; for in proportion as authority is more legitimate, force is the more unnecessary.

Gentlemen, society is governed by ideas. And the most living idea of the modern world is the fundamental idea of our doctrines. Even as the distinguished feature that separates man from other animals, many of which are superior to him in strength, in longevity, and in agility, is the sovereignty of intelligence, so the feature that distinguishes the progressive and virile nations from the nations that slumber in the fatal sleep of materialism, that which distinguishes Switzerland from Turkey and America from China, is liberty, which insulates each man with the undying security of his right, and which unites all men by the authority of the law under the stern discipline of duty and of social rule. O liberty! beloved liberty! in these days when thou art unknown or reviled of so many men; in these days when so many of thy sons abandon thee; in these days when so many of them, who were thy heroes and almost martyrs in thy cause, profane thee because, patient and immortal as nature, thou lendest not thyself for the realization of their dreams or the fruition of their ambitions, I behold thee, serene above all our tumults, immaculate above all our faults and errors, tranquil above all our storms, like the symbolic woman of the great painter of Saville, thy brows lost in uncreated light and thy feet upon the serpent of evil; thou most pure virgin conceiving the ideas that are yet to be our consolation and our glory; thou fecund mother, big with the generations destined to continue the marvelous series of human progress upon the face of the earth. [Stormy and prolonged applause.]

Ah! gentlemen, an illustrious orator of the conservative minority, unfortunately for us, as I repeat, absent to-night, once reminded me that I had said that to seek the genius that had created modern democracy was like seeking the sculptor who shaped the mountains or the architect who hollowed out the valleys. It is true; when a man, however great he may appear, boasts of having created modern democracy, he seems to me like those homunculi of Voltaire's *Micromegas*, who arrogantly boasted before the giant denizens of other worlds that they had created the universe. Yes, modern democracy is the offspring of many forces, the evangelical spirit, the inpouring of the Germanic tribes, who set upon our hearts the indelible stamp of individual self-respect, the irruption of other and still more terrible tribes who arrested the Carolingian reaction, the mysterious hand that uproused the multitudes and led them forth to the Crusades, and the hand likewise mysterious that providentially stayed their course; the cloud of corporations and guilds and communities and town-councils which first began to close the epoch of war and usher in the epoch of labor; the schisms that shattered the power of the theocracy; the councils of the fourteenth and fifteenth centuries that revived the republican spirit of the gospel; the Reformation, that emancipated the human conscience; the Renaissance, that reconciled us with nature; the discovery of printing, which gave us the talisman of immortality; powder, which placed in our hands the Promethean fire; the mariner's compass, that overcame the ocean; the telescope, that pierced the secrets of the heavens; modern philosophy, bringing the law of nature with it, like as the philosophy of ancient Greece gave birth to Roman law; the revolution, sweeping away all the barriers that hindered the march of our hosts toward their ideal; even as all the geologic cataclysms converge to bring forth the human organism, so do all the evolutions of history converge to create democracy, compendium of society and of its imperishable spirit. [Great applause.]

Democracy is created by none, neither can it be destroyed by any. In attempting reforms in the colonies or in Spain, cast your eyes on every side and behold how to reaction there remains not a refuge in the whole world. Where is its refuge? Where is that traditional court on which our *moderados* built their hopes? Where is that holy alliance on which our absolutists reposed their trust? Ah! gentlemen, none of these things now remain! Look at Rome. Yesterday beneath the sway of modern theocracy—to-day the capital of Italy. Upon the Aventine Hill, where humbled penitents but lately crept, to-day the tribunes awaken to renewed life. Look at Austria, the keystone of the holy alliance, the lever of Metternich. Where does she stand now? Ah! Austria has broken her theocratic concordat; Austria has brought her peoples forth from the dungeon of the past and made them autonomic nations. Of old, she cited kings to conclaves for the purpose of dividing the map of Europe among themselves; to-day she summons the nations to a universal exhibition, that they may behold the marvels of industry and of labor. [Applause.] And what is ancient Prussia now, gentlemen? Who is there blind enough to fancy that Prussia is about to be a favorable element for the reactionists of the world? Her Emperor-King is the battle-mace wielded by a higher Power to smite down the kings of divine right and to destroy the empires of old. The Florentine genius of the chancellor of Germany is to-day shaking to its base a structure more formidable than all our aristocracies—the house of peers; is to-day plucking away ancient hereditary influences in administrative circles; is to-day calling the German peoples to universal suffrage; and is to-day accomplishing the idea of German unity, which is a revolutionary idea, because Germany, which stands forth to-day as an imperial federation, shall in the future now very close at hand become a democratic federation. And France? France, yesterday oppressed by that inconstant and willful Bonaparte, who sought to revive the empire and slavery in America; France, democratic as well as conservative; France is to-day wholly and definitely a great republic. Permit me to offer my salutations to our neighboring nation, and I salute her because, in spite of the great calamities she has suffered, she has never lost confidence in herself, and because she puts her trust to-day in the holy virtue of democracy and in the efficacy of republicanism.

And is America perchance following another path? Ah! Grant has been re-elected by the mature political judgment of the American people; he has been re-elected because he took Richmond, that Babylon of slavery, and because he to-day assists the blacks to rise to the highest offices in the state amidst a race that, while descending from the Puritans of New Plymouth, also springs from the Cavaliers of Old England.

And our Spanish-American democracies are day by day growing in culture and in wealth; are day by day developing the measure of their temperament and exhibiting the elevation of their mental power, sure signs of the calmness of their judgment and the constant ripening of their civilization in the bosom of republican institutions.

In Mexico—what has become of the empire? A magistrate goes from the supreme court to the presidency of the republic. Her people, desiring peace, have chosen him, and the soldiers, the men of warfare, cast down their arms at the feet of the magistrate, the representative of law and right. The sundered shores of the Plata are to-day growing in liberty and culture. New Granada is realizing all the miracles of modern individualism. Steadfast and enlightened Chili possesses conservative institutions, to demonstrate that within the forms of republicanism there is room alike for the elements of progress and the elements of stability. In Peru a revolution has recently taken place. In what interest? In favor of a military oligarchy? No! Against a military oligarchy, and in favor of the President elected by the will of her people.

What does all this prove, deputies? It proves that there are no obstacles to the realization of colonial reforms and the immediate abolition of slavery, other than our apprehensions and our fears. As for the rest, it is purely imaginary. Deputies of this majority, you who have been called unknown, obscure, and rural; let not this influence you; return to your firesides and say: "We, who were but yesterday obscure, are to-day immortal; we belong to the race of Christ, of Washington, of Spartacus, of Lincoln, for we have, without fear, uttered the word *Liberty!* and have set our names at the base of the greatest work of man—at the foot of the perfected redemption of all in bondage." [Great and prolonged applause.]

[Appendix K.—Extract translated.]

Synopsis of the proceedings in the Spanish senate December 23, 1872.

[From La Gaceta de Madrid, December 24, 1872.]

The sitting was begun at a quarter past two o'clock.

Mr. Benot asked if it was the intention of the government to bring a bill for abolition in Porto Rico at once before the Cortes.

Mr. Martos said the government was resolved to bring the bill before the Cortes without delay. The government had intended to lay the bill first before the senate and afterward before the chamber. Although slavery was a wrong, certain vested rights had grown up with it. They had to act in two ways: morally, by putting an end to slavery; and legally, by indemnifying existing interests, since these, though not of the nature of property, were sufficiently important to demand the careful attention of the government in framing a law of abolition. It was needful to indemnify the slave-owners, and in order to do so—

Here Mr. Martos was interrupted by Mr. Lasala, and a short discussion concerning the right of property in slaves followed.

Mr. Martos said all this was open to debate when the bill was presented, but now he had simply come to explain the purpose of the government to present a law of abolition. Resuming the question of indemnity, he said that in order to indemnify the owners, ways and means must be devised and funds raised, and as this would affect public credit, the consideration of the measure belonged constitutionally to the lower chamber in the first place, as that body could alone originate any scheme involving taxation. The government was resolved to proceed in this most important matter in strict conformity to the constitution.

Mr. Castro read extracts from a letter from Porto Rico, stating that slaves were being transported from that island to Cuba, in infraction of existing statutes, and in evasion of the intended measure of abolition. He asked if the government had received any information on the subject, and begged that telegraphic orders should be sent to put a stop to the abuse.

Mr. Martos said that the government now heard of this traffic for the first time, and that proper action should be taken in the case related by Mr. Castro. He had, however, the satisfaction of informing the senate that these abuses had been foreseen, and that the new colonial secretary's first step on taking office had been to send telegraphic orders to the authorities of Porto Rico to prevent the realization of these nefarious projects.

Mr. Castro thanked the minister of state.

Mr. Diez asked if the government held that it must indemnify the owners before it could give freedom to the slaves in Porto Rico.

Mr. Martos replied that an answer to this question would involve an explanation and discussion of the whole scope and form of the proposed bill.

Mr. Diez respected the reserve of the government on this point, but he had another question to put. Was the ownership of slaves in Porto Rico legitimate or illegitimate in the eyes of the government? Had the owners been permitted to acquire them by recognized means, as they had done, or had they acquired their slaves in violation of the laws? [Rumors.]

Mr. Martos said the government could not now enter on the discussion of the right of property in slaves. He acknowledged Mr. Diez's right to ask the question, but he requested him not to press it now.

Mr. Diez said he would reserve his inquiry for another occasion.

Mr. Rebullida said that Mr. Martos, in announcing the project of abolition, had employed terms indicative of a disbelief of the government in the right to hold slaves under the existing law. But the new and iniquitous slave-trade between Porto Rico and Cuba, of which Mr. Castro had spoken, showed that it was tacitly understood that slavery would continue to be lawful in Cuba, whatever might be done in the other island. It should be understood in the Antilles that there were senators and deputies who believed that abolition should become a fact and not a principle in all the dominions of Spain, and thus put an end to the traffic Mr. Castro had denounced.

Mr. Martos said there were other means of stopping this traffic than by immediate abolition in Cuba, and it would be stopped by the orders that had already been sent to Porto Rico by telegraph. The policy of the government, in regard to abolition, had been often stated. It was founded on the difference in the actual situation of Cuba and Porto Rico. In the latter, its perfect tranquillity admitted of immediate abolition. The war in Cuba allowed of nothing more than the execution of the preparatory law of 1870, and when peace was restored gradual abolition could be undertaken.

Mr. Rebullida said that the slave-trade between the islands of Cuba and Porto Rico was an international matter, and not domestic. It could be best stopped by immediate and general emancipation. He gave notice that an amendment in this sense would be proposed to any law the government might present on the subject.

Mr. Martos said that the slave-trade between Cuba and Porto Rico was impossible. Existing precautions made the African slave-trade with Cuba most difficult, and for a long time no slaves had been landed there. But in Africa the slaves were not registered, and in Porto Rico they were, and this alone would make the traffic impossible without the connivance of all the authorities.

Mr. Rebullida "rectified." His ideas were not personal, but represented the republican and democratic convictions of the world.

Mr. Martos "rectified." When the time should come for abolition in Cuba, it would be found impossible to realize it immediately, and for that reason a scheme of gradual emancipation there would be preferable.

Mr. Suarez Inclán asked the government to lay before the senate the *expediente*, which had doubtless been prepared before the promulgation of the municipal decree for Porto Rico, including the reports of General Boldrick and Gomez Pulido against the advisability of executing the previous municipal decree of 1870.

Mr. Martos replied that such an *expediente* was for the exclusive use of the cabinet, and would not be made public.

* * * * *

The senate went into secret session at 30 minutes past 3 o'clock.

[Appendix M.—Extract translated.]

Synopsis of the proceedings in the chamber of deputies, December 24, 1872.

[From the Gaceta de Madrid, December 25, 1872.]

The sitting was opened at half past two.

Mr. Jove y Hévía called for the reading of the 108th article of the constitution.

It was accordingly read.

MR. JOVE Y HÉVIA said that this article showed that colonial reforms could be treated by the Constituent Cortes alone.

The President (Rivero) called him to order.

* * * * *

The president of the council of ministers said the government, and he was sure the house also, desired the fullest liberty for the expression of individual views on colonial matters at this moment. Mr. Jove y Hévía had called for the reading of an article of the constitution. The regulations did not permit him to explain why he had read it. If Mr. Jove y Hévía had anything to say, the parliamentary rules gave him means to say it before the reading of the bill abolishing slavery in Porto Rico wholly and forever. He might put a question or make an interpellation, and he, the president of the council, would rise before the chamber and the nation, and show that in treating of the questions of reforms for Porto Rico, the government was always ready to answer the friends of the league and the enemies of emancipation.

Mr. Jove y Hévía, after a brief passage of arms with the president of the chamber, said the language of the constitution was decisive, for it provided that reforms in the Antilles should be decreed by the Constituent Cortes. The president of the council had called him an enemy to emancipation. He was not a foe to abolition in principle: in the first place because of his natural instincts; in the second place because of his sense of justice; and in the third place because he was faithful to the precepts of the Catholic Church, and he believed that no good Catholic could, before the tribunal of his conscience, hold a slave, even for a single moment. (Great applause.)

"You applaud the church—not me," he said. "Give no applause to me; you will repent of it; for I hold, although an abolitionist in principle, that governmental and legislative acts should bear the stamp of scrupulous care, of deep attention, and, above all, of opportuneness, in order that from these acts, although in themselves good, evil consequences may not flow." He had not yet heard the proposed bill, but from reports of its tenor, he thought its haste and inopportuneness were most evident.

The colonial minister (Mosquera) said the reading of the bill would soon convince Mr. Jove y Hévía of his misconception of the measure. He had attacked it *a priori*, and without being acquainted with it. By his declaration that he was in principle an abolitionist, and that no Catholic could hold a slave for a single moment, he had given more strength and efficacy to the project of the government.

In 1870 the Constituent Cortes had decreed that a future Congress might legislate in the matter of colonial reforms. The law of abolition was an ordinary law, and did not treat of a fundamental institution, but simply of the relations between slaves and their masters. Mr. Jove y Hévía's construction of the 108th article would take from all future Congresses all power over colonial legislation, on the ground that all colonial legislation was confined to the Constituent Cortes. This, without offense to Mr. Jove y Hévía, was purely and simply absurd. This measure had been fully considered and maturely discussed by this government in view of all the reports and projects and antecedents since 1865, and a mass of documentary precedents had been consulted. It would be brought before the Congress to sustain the amplest examination and debate before it received the final and solemn sanction of the Parliament and of the King. Not only this, but its presentation had been prefaced by a most solemn discussion in both senate and chamber, an unusual occurrence. Was this treating the question *ex abrupto* and *ab irato*?

He concluded by congratulating Mr. Jove y Hévia on his frank declaration, that no good Catholic could hold a slave, even for a single moment.

Mr. Jove y Hévia said he had simply uttered the convictions of his own inner conscience, with respect to the duties of a Catholic.

Mr. Lasala asked that the voluminous antecedents, of which the colonial minister had spoken, should be laid before the committee to which the bill would be referred, in order that it might report thereon with a full understanding of its merits.

The colonial minister said he would have great satisfaction in doing so. He had already given orders for their preparation, in proper form, to be presented to the chamber. They were numerous, and it would take time to arrange them, but meanwhile they were at the disposal of any deputy who might desire to see them. He wished all possible light thrown on the subject.

The president of the chambers said he presumed these documents would be submitted before the termination of the holiday recess, and he hoped they would be furnished as soon as possible.

The colonial minister said he had ordered their preparation with all possible dispatch.

The president of the chamber said he would inform the deputies as soon as the documents were received, in order that they might study them, for the question needed much study. Several deputies then added their names to the previous vote, in favor of Mr. Becerra's motion.

Mr. Olavarrieta said his name appeared among those voting in favor of the motion, when in reality he had voted against it. He begged that the error be corrected in the official reports.

The Secretary (Moreno Rodriguez) stated that the desired correction would be made.

The colonial minister then occupied the tribune, and read the following royal decree, and the preamble and bill to which it referred:

"In accord with the advice of the council of ministers, I hereby authorize the minister of the colonies to submit to the deliberation of the Cortes the following bill for the immediate abolition of slavery in the island of Porto Rico.

"Given in the palace the twenty-third of December, one thousand eight hundred and seventy-two.

"AMADEO.

"The Minister of the Colonies,
"TOMÁS MARIA MOSQUERA."

(For the full translation of the preamble and bill, see Appendix N.)

The chamber thereupon adjourned until after the holiday recess.

[Appendix N.—Translation.]

Bill for the immediate abolition of slavery in the island of Porto Rico, presented by the colonial minister, Chamber of Deputies, December 24, 1872.

[From El Diario de las Sesiones de Cortes.]

TO THE CORTES: In the name of God and in obedience to right, morality, and justice, to the welfare of the people and the dignity of the nation, this government, fulfilling the most sacred of its promises and the most humanitarian of its duties, submits for the approval of the Cortes a bill for the immediate abolition of slavery in the province of Porto Rico. Its most ardent desires would be realized and its most delicate scruples satisfied if the insensate obstinacy of a few rebels did not hinder it from granting the same inestimable boon to Cuba, with the modifications that would necessarily be demanded in view of the different organization of the system of labor in the two islands, the different density of their population, the enormous inequality in the number of their slaves, and other fundamental differences in their social status.

The government would fear to offend the good judgment of the Cortes if it sought to justify its generous resolve before them. Unhappy are they the muteness of whose conscience renders needful the cold language of reason.

It is an evident and consolatory moral law that utility is ever the inseparable companion of justice; but the government owes it to itself to declare in this solemn moment that, after examining this reform under every aspect, it has only found new and powerful reasons that at once assure its opportuneness and prove its justice.

Gradual abolition, which will, perhaps, one day be the necessary form of emancipation in Cuba, offers no advantages to recommend it in Porto Rico. The population of African origin in the latter island is relatively less numerous than that of European

extraction; nearly all the blacks have been born in the island; of the 31,000 held in slavery, less than 10,000, perhaps less than 8,000, are devoted to field-labor; the remainder live in a sort of domestic servitude, as barren of profit to the masters as it is favorable to the education of the slaves or those employed in mechanical operations. No danger, therefore, arises from the number or condition of those who in a single day may cease to be chattels and acquire the noble station of free men.

Let the happy day dawn when Spain may pay the debt of honor she has contracted toward modern civilization. By a chance, which seems providential, the presentation of this project falls on the day consecrated by Christianity to the commemoration of the birth of Him who was to change the face of the world, breaking the bonds of all servitude and proclaiming the equality of all men before their God.

Let us, then, aid his work and realize a fresh achievement in the interest of humanity and for the good of the country. Slavery is a monstrous wrong, no less baleful to them who impose than to them who bear it. All great humane and patriotic interests cry aloud for its disappearance, which will at one and the same time redound to the well-being of the redeemed and the honor of the liberators. It is demanded by religion, for among the sons of our common Father there should be neither oppressed nor oppressors. It is demanded by morality, for there can be no merit in acts performed without free will, and the soul of the slave is nearly always a place apart, shut out from all idea of duty and all sentiments of virtue. It is demanded by right, for there is no wrong comparable with the mutilation of human entity in its most noble and essential attributes. It is demanded by utility, for slave-labor is the least intelligent, the least productive, and the least active of all. It is demanded by patriotism, since apathy and weakness and corruption are the common chastisements of those peoples who sleep in luxury and leave to the hands of bondmen the thousand-fold applications of that labor which is the eternal law of our nature and the eternal companion of our own self-worth. It is demandable by policy, because domestic habits are so intimately linked with public customs that where the groan of the slave is heard it is hard to rear citizens apt for the ruder exercise of liberty. It is demanded by prudence, for the unwise continuance of any abuse makes its remedy more difficult and its correction more violent; and lastly, it is demanded by the necessities of the government under our system of representative institutions, for in free nations no resistance can prevail against the force of opinion, and in Spain, fortunately, opinion is frankly and resolutely pronounced against this barbarous monstrosity whose supposed benefits consist in reducing to gold the sweat, the tears, the blood, and the souls of an unhappy race, condemned until now to suffer the lash and the chain.

Basing this action on the foregoing high considerations, the undersigned minister, in accord with his colleagues and with the previous authorization of His Majesty, has the honor (which he esteems as the greatest of his life) to submit to the consideration of the Cortes the following

BILL.

ARTICLE 1. Slavery is hereby totally and forever abolished in the province of Porto Rico. The slaves shall be *de facto* free at the expiration of four months from the date of the publication of this law in the Official Gazette of that province.

ART. 2. The owners of the slaves thus emancipated shall be indemnified for their value within the term fixed in the foregoing article, conformably to the provisions of this law.

ART. 3. The amount of the indemnification to which the preceding article refers shall be fixed by the government, on the recommendation of a commission composed of the superior civil governor of Porto Rico, who shall be chairman; the financial intendente of the province, the attorney-general of the audiencia, three persons named by the provincial assembly, and three others chosen by the five largest slave-owners in the island.

The resolutions of this commission shall be adopted by a majority of its members.

ART. 4. Of the amount fixed by way of indemnification, 80 per centum shall be delivered to the owners of the slaves emancipated, half at the charge of the state and the other half at the charge of the province of Porto Rico, the remaining 20 per centum being at the charge of the owners themselves.

ART. 5. The government is hereby authorized to raise the necessary funds and to adopt such measures, as it may deem conducive to the exact fulfillment of this law within the period fixed in Articles 1 and 2.

The minister of the colonies,

TOMAS MARIA MOSQUERA.

MADRID, December 23, 1872.

[Appendix Q.—Translation.]

Address of the Senate and House delegations to the King, and replies of His Majesty, January 1, 1873.

[From La Gaceta de Madrid, January 2, 1873.]

THE PRESIDENCY OF THE COUNCIL OF MINISTERS.

Yesterday at noon His Majesty the King was pleased to receive the committee of the Senate appointed to congratulate him on the opening of the new year.

The president of the senate addressed His Majesty in the following words:

“SIRE: With the opening of the new year, the third year of Your Majesty’s reign begins under happy auspices, while the year just closed sees with joy that the work of the constitutional convention, recognized at once by all civilized nations, consolidates itself in a shorter time and fortifies itself with greater strength than institutions and dynasties of traditional origin.

“The senate confidently hopes that this third year of Your Majesty’s reign will remain fixed among the glories of Spain by the imperishable achievement in humanitarian reform which will soon put an end to slavery in the beautiful province of Porto Rico, notwithstanding the opposition to it of certain egotistical interests and certain political ambitions, against which suffice that firmness of character which distinguishes Your Majesty and the vigor which the sense of right and the possession of liberty stamp upon the decisions of Congress.”

His Majesty the King was pleased to reply:

“MR. PRESIDENT: I receive with the highest appreciation and with most profound satisfaction the congratulations which the Senate offers to me to-day, when grateful recollections engage my attention and grave reflections occupy my thoughts; for to-day marks two years since I began to rule in Spain—the commencement of duties in behalf of my new and beloved country, as arduous in their fulfillment as the honor is a high one I have received at the hands of the Spanish people, by whose will this throne was erected, upon whose love its foundations were laid, and by whose confidence it is to be strengthened and sustained. It is by such means that, while the country enjoys the fruits of the revolution, and while the work of the constituent Cortes is perpetuated, at the same time the energy of popular right manifests itself, in virtue of which new dynasties and modern institutions begin early to take root and acquire for themselves a robust maturity.

“I accept as a happy omen for the year just now begun the announcement which the Senate makes to me, and the hope they express that those men who now live as slaves in the loyal Spanish province of Porto Rico shall soon enjoy their liberty. A measure so humanitarian and so Christian will be a glory for Spain, an honor for the Cortes, a luster upon my reign, and a blazon for my dynasty. Civilized nations will find in this a new cause to congratulate themselves upon having recognized from the first moment the work of 1868. Spain will feel a natural pride at seeing herself esteemed and applauded by all the world, while they who have shown themselves distrustful will see that it is not reasonable to fear that an act of justice and humanity may be a source of danger to our prosperity and tranquillity.”

At a quarter past twelve the committee of the chamber of deputies presented their congratulations to the King, with the same motive.

The president of the chamber of deputies addressed His Majesty as follows:

“SIRE: This day, which ushers in a new year in the evolutions of time, recalls to our minds the eve of a solemn moment in the life of Your Majesty, and a memorable epoch in the history of Spanish liberty. The chamber of deputies, the immediate representative of the people, lay with joy before the elect of the nation the homage of their love, of their respect, and of their unshaken loyalty.

“Fortunate it is for Spain, and a glory for Your Majesty, that here, in this place, where flattery has so often raised its voice, are to be heard to-day congratulations prompted by the purest affection, and commendations dictated by the most heartfelt sincerity. The Spanish people is now beholding the fulfillment of the hopes with which, two years ago, they greeted Your Majesty for the first time, in your august person every citizen sees and loves the faithful guardian of popular rights and the swift defender of popular liberties common alike to all Spaniards without distinction of party or of class.

“Thus in vain are the plots, the conspiracies, and assaults directed against the popular throne by those who act only in obedience to the baleful influences of party interest; now profaning the sacred name of liberty; now invoking aid from the empty shadows of antiquated institutions, long condemned by history, and now murmuring names which are made more hateful as we are vividly reminded of the intolerable abuses which they symbolize. Reaction, mobocracy, treason itself, if there be in this loyal land any one capable of treason, shall be crushed under the weight of public condem-

nation, for Your Majesty, who so well understands and so wisely practices the sacred duties of your high office, will ever continue with unwavering firmness to assist all measures tending toward progress, and to lend an attentive ear to public opinion, the only counselor of popular kings and the only support of thrones founded upon the free-will of a nation.

"Listening again to that voice which you have never disregarded, Your Majesty has now immortalized your reign by authorizing the presentation of a bill which, as soon as it shall have been approved by the Cortes and shall become a law of the realm, will restore the rights of manhood to the thirty-one thousand unhappy beings weighed down to-day by the cruelties of slavery.

"And if, at the outset, the voice of disappointed interests or of hostile opinions should cry out against such a sublime act of humanity, its glorious results shall in the end allay all ill-will, shall calm every passion, and shall dispel every apprehension, and (let Your Majesty doubt it not) our most remote descendants shall bless the hour in which, following the inspirations of right, of justice, and of public good, you determined to wipe out forever the only blot upon our glorious escutcheon in the eyes of the civilized world.

"With hopes so well founded and under such happy auspices the chamber of deputies, in the name of the people whom it represents, implores the blessing of Heaven for Your Majesty, for the noble lady whose virtues adorn your throne, and for the royal children who, trained by so pious a mother in the sacred love of liberty, are to-day the hope of the nation, and shall one day be the honor of their family and the just pride of their country."

The King was pleased to reply :

"Mr PRESIDENT: Upon the solemnity of this day, the chamber of deputies reminds me that the beginning of my reign corresponds with an epoch memorable for the liberties of Spain. This recollection is to me as proud a one, and as worthy of my regard and appreciation, as is the homage paid to me by your love, your loyalty, and your respect.

"In guarding and defending public liberties and popular rights, I have only been true to the dictates of my conscience and to the oath which, of my own free will and in the sight of all the world, I took in the midst of the Constituent Cortes. Receiving the assurance, in the name of the chamber of deputies, that the Spanish people witness the fulfillment of the hopes with which they greeted me for the first time two years ago, I feel the greatest pride that a man may cherish and the most hearty satisfaction that a monarch may entertain.

"Full of the deepest love for this my adopted country, which, by raising me to the highest dignity, has placed upon me the gravest responsibility, I pray to God that He will grant to it, in the year which now begins, the peace and prosperity which it deserves. I am confident, as is also the chamber of deputies, that the conspiracies directed against liberty and progress will be fruitless in the time to come, as happily they have been up to the present moment. And I sincerely and ardently long for the day when, with all angry passions laid aside, every one may be persuaded that there is no opinion and no interest which may not thrive in the shadow of a throne founded upon the national will, and daily more and more identified with the people and more firm in its determination to seek counsel in public opinion and to give up in the interest of freedom every temptation to injustice and every pretext for violence.

"The words of approval with which the chamber of deputies, the immediate representative of the people, receives the proposition to abolish slavery in Porto Rico are to me a happy presage that very soon we are to give freedom and happiness to many thousands of men, joy to our Christian hearts, satisfaction to our country, and a just cause of praise to all civilized nations.

"Profoundly do I thank the chamber of deputies for the sentiments expressed toward my wife and my children, whom we shall train up in the love of liberty to the end that they may become worthy of their country."

No. 378.

General Sickles to Mr. Fish.

No. 523.]

UNITED STATES LEGATION IN SPAIN,
Madrid, January 27, 1873. (Received March 24.)

SIR: I have the honor to report that on the publication of the royal order of December 26, 1872, a copy and translation of which are herewith appended, I pointed out to the minister of state, and subsequently, at his

suggestion, to the minister of Ultramar, the vexatious and objectionable clauses in the new customs regulations for Cuba. The colonial secretary promised to consider my suggestions. I asked if the representations in my note of November 27, 1872, had been considered. The minister assured me they had not been overlooked; that, on the contrary, a communication had been sent to the Intendente, embodying several of the reforms suggested, the purport of which would be made known to me.

On the 15th instant I received the note from the minister of state, dated 2d instant, a translation of which is annexed. (Appendix C.)

Not regarding the action taken by His Majesty's government as likely to be satisfactory to the President, I have made further representations to the minister of state on this subject, which I hope may be approved. They will be found in a copy of a note addressed to the minister, under date of January 27, herewith inclosed and marked Appendix D.

I am, &c.,

D. E. SICKLES.

[For the inclosures above referred to, see inclosures to No. 610, from General Sickles, post, p. 990 to p. 995.]

No. 379.

General Sickles to Mr. Fish.

[Telegram.]

MADRID, *January 30, 1873.*

In view of the frequent interruption of communications by telegraph and post between Madrid and the frontier, and having reasons to anticipate very soon a change in the form of this government, I beg you to instruct me as to my line of conduct in case the existing Congress shall declare itself a convention and appoint a new executive.

SICKLES.

No. 380.

General Sickles to Mr. Fish.

[Telegram.—Received Feb. 10—12.10.]

MADRID, *February 10, 1873.*

Events foreshadowed in my telegram of January 30 imminent.

King has announced to cabinet his desire to abdicate. Revolution inevitable.

SICKLES.

No. 381.

General Sickles to Mr. Fish.

[Telegram.]

MADRID, *February 11, 1873.*

Chamber of Deputies declares itself in permanent session on motion of Figueras, republican deputy.

SICKLES.

No. 382.

General Sickles to Mr. Fish.

[Telegram.—Rec'd Feb. 12—10.15 a. m.]

MADRID, *February 11, 1873.*

At half-past four this afternoon the two houses unite under presidency of Rivero, and declare themselves in the exercise of sovereign powers. Martos, in name of cabinet, presents resignations of ministers. Cortes accept unanimously abdication of King.

SICKLES.

No. 383.

General Sickles to Mr. Fish.

[Telegram.—Rec'd Feb. 11—7.30. p. m.]

MADRID, *February 11, 1873.*

At 9 o'clock to-night Cortes adopt republican form of government—259 affirmative, 32 negative.

SICKLES.

No. 384.

General Sickles to Mr. Fish.

[Telegram.—Rec'd Feb. 12—10 a. m.]

MADRID, *February 11, 1873.*

Abdication of King read at 3 this afternoon in Chamber of Deputies. Senate and house go into joint session.

SICKLES.

No. 385.

General Sickles to Mr. Fish.

[Telegram.—Rec'd Feb. 13—9.50 p. m.]

MADRID, *February 11, 1873.*

Midnight. By authority of Cortes the executive government is constituted as follows:

President, Estanislao Figueras.

Secretary of state, Castelar.

Secretary of war, General Cordova.

Secretary of navy, Beranger.

Secretary of interior, Pi Margall.

Secretary of treasury, Echegaray.

Grace and justice, Nicolas Salmeron.

Public works, Becerra.

Colonies, Francisco Salmeron.

Four of these have heretofore been prominent republicans. Four were members of late cabinet, and the present colonial minister was vice-president of chamber of deputies.

Martos declined office.

Tranquillity perfect.

SICKLES.

No. 386.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *February* 12, 1873.

So soon as the republican government is fully established and in possession of the power of the nation you will recognize it. You will not fail to urge upon a government already committed to the principles and the expediency of emancipation and of political reforms the immediate enforcement of practical and efficient reforms and the abolition of slavery in the colonies. The present seems to be the moment when the government can accomplish great results. Endeavor to have the decrees self-acting, and not dependent upon future regulations, which have always proved inoperative and reactionary.

FISH.

No. 387.

General Sickles to Mr. Fish.

[Telegram.—Received Feb. 14—10 a. m.]

MADRID, *February* 12, 1873.

Castelar said to me to-night, with much feeling, that the Spanish Republic looked especially to our Government and people for sympathy and support, and inquired with solicitude whether our recognition would be delayed.

President and cabinet entered on their duties at quarter past 2 this morning. Cortes adjourned till this afternoon.

Madrid is illuminated.

SICKLES.

No. 388.

General Sickles to Mr. Fish.

[Telegram.—Received Feb. 12—8.20 p. m.]

MADRID, *February* 12, 1873.

All parties in Congress accept the republic. Am officially notified of new government by Castelar, minister of state, to whom I have addressed

a communication assuring him of my fervent wishes for the happiness and prosperity of the noble and generous people with whom, as a sister republic, the Government of the United States will ever cherish even more than the traditional friendship which has hitherto allied the two countries.

SICKLES.

No. 389.

General Sickles to Mr. Fish.

[Telegram.—Received Feb. 13—4.15 p. m.]

MADRID, *February 13, 1873.*

Your telegram of 12th received. Conference with Castelar appointed for 4 this afternoon; time and manner of presentation to President of republic will then be arranged.

Martos, who declined the presidency of the republic, was last night elected president of the sovereign assembly.

Tranquillity uninterrupted.

SICKLES.

No. 390.

General Sickles to Mr. Fish.

[Telegram.]

MADRID, *February 15, 1873.*

Officially received to-day, with great ceremony, by Chief Executive Figueras, and also by president of sovereign assembly, Martos. Addresses of each most friendly. Shall I report remarks by cable? Proceedings reported to assembly by Castelar in brief and brilliant speech. Order assured; funds rising; confidence established.

SICKLES.

No. 391.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *February 14, 1873.*

I understand from your telegrams of 12th and 13th that you have recognized the new government. It will be grateful to know that you have regarded the condition and prospects of the republic such as to justify the discretionary power given you in that regard. This Government and people look with sincere and earnest hope for the peaceful and permanent establishment of the new government.

FISH.

No. 392.

General Sickles to Mr. Fish.

[Telegram.—Received Feb. 16—5.5 p. m.]

MADRID, *February* 16, 1873.

Have communicated your telegrams of 12th and 14th to this government, and am requested by President Figueras to convey to you the expressions of satisfaction and appreciation with which our friendly assurances have been received. My speech and that of the President in reply were afterward read to the assembly by Castelar, and received with general applause.

SICKLES.

No. 393.

General Sickles to Mr. Fish.

No. 540.]

UNITED STATES LEGATION IN SPAIN,
Madrid, February 18, 1873. (Rec'd March 25.)

SIR: Referring to my No. 492, (confidential,) of December 3, 1872, and to my telegram of 30th ultimo, I proceed to report the occurrences of the past week therein foreshadowed.

On the night of Sunday, the 9th instant, a rumor, apparently authentic, was heard at the opera, and in some of the clubs, that the King had intimated his desire to renounce the crown. On the following morning several of the journals confirmed the report, although suggesting that an act of the Cortes would be necessary before such a step could be taken, in conformity with article 74 of the Spanish constitution. During the day it was understood that this grave question was under consideration in cabinet council, and that Congress would be asked to suspend its sittings for a few days to enable ministers to prepare the necessary measures to meet the crisis. It seems that a communication in this sense was sent by the president of the council to Mr. Rivero, the presiding officer of the chamber of deputies, which that officer declined to announce officially to the house, lest such a proof of the irresolution of the cabinet might provoke popular tumult.

I had an appointment for that day, the 10th instant, at three in the afternoon, with the minister of state at the foreign office. At noon Mr. Merelo, the assistant secretary, called at the legation to say that the minister could not meet me as proposed, and it was not difficult for me to satisfy myself, despite the reticence of my visitor, that there was ample foundation for the reports I had heard. The chamber of deputies met as usual at three p. m., and I repaired to the diplomatic tribune, where several of my colleagues soon afterward joined me. Empty benches and a dull debate poorly reflected the animation already visible in the streets. Descending to the floor of the house, I soon encountered groups of members in the halls and *salons*, busily discussing the theme as yet forbidden in the chamber itself. Observing Rivero, the president, leave the chair, I went to his room, and had scarcely saluted him when several of the cabinet entered, among them Martos, Beranger, and Becerra, in whose faces I fancied I could see a serenity and satisfaction of good augury.

Returning to the diplomatic tribune, it was not long before Rivero resumed the speaker's chair, which was regarded as only preliminary to the appearance of ministers in their places. A crowd of members came in from the lobbies, and expectation was on tip-toe for a statement from the government bench. None of the cabinet appearing, the hum of conversation soon swelled into loud murmurs, as it was of course known that the council had risen, and ministers were in the ante-chamber.

Figueras, the republican parliamentary leader, seized the opportunity afforded by the impatient temper of the house and demanded that the speakers should request the attendance of ministers, in order that Congress might be informed of the crisis, which it was understood embraced not only the cabinet, but even the Crown.

Rivero replied from the chair that he had already sent repeated messages to the government, requesting their presence, and that this would be the last he proposed to send.

At this moment the ministers entered the chamber, the president of the council foremost.

Mr. Zorrilla at once rose and requested Mr. Figueras to repeat the inquiry which had been addressed to the government through the chair in the absence of the cabinet.

Figueras promptly responded, saying he would omit his preamble and come to the point. He wanted the house to hear what the government proposed to do in the present juncture, and if the government was not prepared to submit a proposition, he would do so himself.

Zorrilla made a long speech in reply, to much of which the house listened with marked impatience. He said it was true the King had spoken of abdication, but nothing could transpire officially on so grave a matter until His Majesty had given the subject more reflection; that ministers had besought the King to pause in his purpose, and take twenty-four or forty-eight hours to reconsider his determination; that meanwhile, and in order that there should be no precipitation, he hoped the house would suspend its sittings, thus leaving the government disengaged from other duties, so that they might consider and frame the measures most expedient to be brought in for the action of Congress.

While this debate was going on, a great multitude had gathered around the palace of the chamber of deputies. Although here and there an irrepressible agitator harangued groups of listeners, the crowd was calm, though anxious to know something of the action of the chamber. To satisfy this feeling and avert any untoward demonstration, several influential deputies came out and spoke to the people from the balconies and porticos of the building. Troops were sent for to keep the streets open and allow deputies to pass in and out of the palace. The arrival of a couple of companies of cavalry and a small force of infantry caused a flurry and some scampering, but it was soon seen that no offensive movement was contemplated. The people made way for the column, which broke into detachments, posted at the approaches to the palace, and kept a clear space for some distance.

To return to the chamber. As soon as the president of the council concluded his long speech, Figueras rose to reply.

Rivero, from the chair, said the rules did not allow a deputy to continue the discussion after his question had been answered.

Figueras invoked the practice of Parliament to open a debate when a cabinet crisis was announced, remarking that this was even graver, since the very institutions of the country were tottering.

Rivero suggested that the only way to open a debate was for Figueras to announce an "interpellation."

Zorilla, on the part of the government, said they were not disposed to answer an interpellation, as they required all their time to meet the necessities of the situation; and he begged Mr. Figueras not to avail himself of the last resource afforded him by the rules—that of offering a proposition.

Figueras replied that he regretted he could not accede to the request of the president of the council of ministers, for to do so would make himself the most criminal of men. He demanded the reading of a proposition he had placed on the table before the order of the day was announced.

The secretary then read the proposition, as follows: "Congress agrees to go into permanent session." (Signed by five members, as prescribed by rules—Figueras, Ramos, Calderon, Huelves, Patino, Puigcerver y Nieto.)

Figueras supported his proposition in a brief, strong appeal, saying that the speech of the president of the council reminded him of what Tiberius said to his doctors: "You dispute while I die." The government asked forty-eight hours to consider while the country is in agony, and when in a few minutes the fate of the nation may be decided by the people. Are we here in a bed of roses, where we can slumber until it pleases the president to wake us up and tell us the King has revoked "an irrevocable resolution?" Do you know what may happen in twenty-four hours? Monarchies have a habit of procrastination. Who knows if in these twenty-four hours we shall not see armies here that will cover in mourning and blood the capital of Spain? Rather than this should happen I prefer that this should be the last day of my life. After having struggled thirty years for the republic, a solution that embraces all, and is the only salvation of the country, shall we repel it for the convenience of a dying dynasty?

The president interrupted Figueras, saying, "I beg, sir, you will not reflect upon the dynasty." Many deputies exclaimed, "There is none!" Zorilla cried out, excitedly, "Prove to me there is no dynasty!" an exclamation that provoked laughter.

Figueras responded that he always yielded to the chair. He could do no less, however, than to put on record, in conclusion, the words pronounced by the minister of state when he fought with us in the opposition: "If the King disappears or perishes, we will say long live the nation." The King goes. What are we to say now? "Long live the nation!" The crown renounced! From the moment those words fell from the lips of the King, and the president communicates them to us here, they are beyond recall.

Zorrilla said he had made no official communication to the chamber of the abdication of the King. If he had communicated to the council of ministers what His Majesty had said he had only done his duty; was that official? What reason has Mr. Figueras given to precipitate a crisis and ask Congress to declare itself in permanent session. Is he afraid that for some reason or other our liberties will be lost? Does he suspect us to be traitors? Does he think we are weak? Suppose we are weak! What powers does he wield to substitute for ours, to do what we are unable to accomplish? What is meant by this permanent session? I beg Mr. Figueras to explain his purpose. Is it understood that the session is to go on even in the absence of a majority of the deputies, as if an enemy were at our gates? Is it intended that the chamber may at any moment come to a supreme decision, overturning the dynasty and the government and all the public powers? If so, the government cannot accept the proposition.

Figueras said he did not suspect any one in particular, but every one

in general. He was like the authors of the representative system, neither more nor less. He was accustomed to hear many promises, and the sound of cannon answering them. It was not intended that Congress should go on debating interminably, because moments may happen in which there will be nothing to discuss. But he demanded there should be no adjournment; that they should await events in their seats, and meet them in a way becoming the magistracy of a great nation.

Zorrilla said he recognized the solicitude of the chamber, but he could not admit that the government needed a guardian to see that it performed its duties. The cabinet was competent to fulfill its trusts and defend liberty.

Figueras said he was sure the minister had not understood him. Every one knew there was no executive power; that a struggle was imminent between the legislative and executive departments. We were menaced by a reactionary ministry. The president of the council himself intimated that he had so advised the King.

Zorrilla interrupted and said he had not said this, but he had a right so to advise the King.

FIGUERAS. "I so understand you; if I am mistaken I am glad. We are in critical moments. It is necessary that Madrid see a power to protect it; that the Cortes be here in the exercise of their powers to meet any exigency."

ZORRILLA. "Let it be understood that I have had no occasion to advise the King, and that I have not advised him. The ground taken that there is no executive power confirms my position. One of two things must be done. If there is an executive authority, as I affirm, there is no need of a permanent session. If the chamber thinks that the executive has ceased to exist, then let it proceed to name one at once. The republicans and other deputies can be as distrustful as they choose, but I maintain that the cabinet exercises the executive power, with the sanction of the Crown and the vote of the chambers, until we are dismissed by the one or the other. I might have furnished Mr. Figueras a solution consistent with the dignity of the government and the apprehensions of himself and his friends, but he wishes something else to which I cannot consent."

The MINISTER OF STATE, (Martos.) "This is not the time for long speeches, but for great and patriotic decisions. The situation is grave. Let us not aggravate it. Let us consider calmly what is happening. Mr. Figueras has reminded me of what I said on a former occasion. I do not forget the words. I said one day, from yonder benches, (pointing to the left,) that when all should be lost, that when unhappily there should be no king, we would cry: 'The King is dead—long live the nation!' I repeat it now. But let the chamber say it when the King is gone. I beg you to hear me, to listen to one who has a right to your attention, because he has never spoken unless to express his honest, sincere, and patriotic purposes. Does not the constitution afford us the means to meet pacifically and legally any crisis that may arise? If so, you have not the right to anticipate events or to manifest distrust. Your apprehensions may be excused by your patriotism, but they have no foundation. Has the moment arrived when you should bring to this bulwark of liberty the torch of discord? I am a minister of the Crown, one of a cabinet that has thus far merited the confidence of the chambers. I must preserve my honor and loyalty as one of His Majesty's ministers, and more than ever if His Majesty persists in his determination. I heard with disdain the excitations to a greater loyalty addressed to me in times when the dynasty was prosperous, but in this hour of the King's extremity I shall not refuse him m -

voice, my counsel, or my life. It is true, gentlemen, that I fear the decision of the King is irrevocable. After making known his purpose I fear he must execute it. This being so, I ask, can anything be more clear than the future of the republican party? The difficult point in the situation is with those who are resolved to perform their duties as a government until the King has signed his abdication, and until the Cortes have established such a government as it may please them to ordain. I know that in maintaining our trust we may see the blood of the people shed, and you will comprehend the gravity with which we appreciate the situation. This last duty to the dynasty performed, I am also one of those who will be found where liberty is fighting, in the ranks of her common soldiers, indifferent to the mere name inscribed upon the banner. This is one of the difficult moments of public life, not for you, republicans, who have only to be patient, because, if the King goes, there is nothing else possible but the republic. And you, by your impatience, are compromising the republic and liberty! [Loud protests from the republican seats.] Rather than your interruptions I would prefer reasons. I would rather Señor Castelar should tell me whether or no I am right. You demand a permanent session. That is to say, there is no executive, and the assembly assumes all powers. ['No! No!'] Then if you do not mean that, so much the better. The government says we can preserve order better than an assembly, because deliberative bodies cannot be efficient guardians of public order. [A voice, 'We watch over liberty!'] The government will look after liberty and we will all look after the liberties of Spain. But are we in that extremity that we must watch without a moment of rest? There is no occasion for such sleeplessness, because the dangers which Señor Figueras imagines do not exist. After all, what has Señor Figueras told us? That we may have a reactionary ministry, supported by an army that might reach Madrid in twenty-four hours. The moment when the King puts his determination in force there will be no other authority than the Cortes, and all patriots and all loyal generals commanding troops will come here for orders. Where is the army that Señor Figueras fears? [A deputy: 'In Vitoria.'] Would to God that in Vitoria we had a large army, because under the orders of its commander (Moriones) it would be a guarantee of liberty. Since, then, there is no danger, there is no occasion for a permanent session. The King still reigns under the constitution, ministers are still at their posts performing their duties, and the constitution affords the means of settling all conflicts that may arise. Why, then, precipitate events? Where, then, is the difficulty we are unable to solve? Where are the ambitions, the tumults, the disorders, the hopes, the fears? I pray you to believe, gentlemen, that whatever may happen can be met by the general and energetic co-operation of those of us who are resolved to save liberty. If any one doubts me let him say so. If I have your confidence, then I pray you to believe that speeches and votes and propositions to-day may bring unhappy consequences to-morrow. I appeal to the patriotism of all. Do not foment dissensions. Withdraw this proposition. Avoid everything not legal and constitutional in its origin. From our constitution will come the remedy for all our difficulties. Even if chaos comes and a new creation is necessary, let it appear with law; let it come from this chamber if it is not so born. If our institutions are found in the streets and barricades liberty is lost. If they come from our hands sanctioned by law we may be sure their birth will be auspicious, and they will save the country and liberty." [Great and long-continued applause.]

Figueras made a brief response, saying if he could curse the divine

word that makes man the most worthy of creation, he would denounce the voice of Señor Martos, who had just administered to the majority an opiate to put them to sleep in order that they might awake on the morrow humiliated, beholding their lost liberties. "My distinguished friend," he said, "has given compliments to some, hopes for others, and a mixture of both for all, but not an argument for any one. I find, gentlemen, in his words the most powerful reasons in favor of my proposition. He tells us the determination of the King is irrevocable, and that the question rests with us now; it is impossible for the King to recede. This being so, no reason can be given why we should not remain in permanent session. In such a moment if any one wishes to sleep let him sleep. As for us republicans, when liberty is in danger we know not repose. The God of battles, who sends us these moments of trial, will give us the strength to support the immense responsibility it has pleased Him to impose upon us. Let us, then, wait here, with our worthy president in his place, the secretaries in their places, and let us not be moved by those whom we suspect in these moments to be devising plans for the destruction of liberty and the dissolution of this chamber." [Sensation.]

Castelar then spoke. He asked the Cortes not to expect a speech from him in these grave and solemn moments, when his heart and his conscience prompted only grave and patriotic acts. One could not speak at a time when every passing moment might carry with it a danger to liberty fatal to the fortunes of this generation and of generations to come. To-day a display of eloquence would seem like the levity of Nero strumming the lyre while his capital was in flames. "Never in my life have I so much admired eloquence, the grandeur of human words, as when listening to-day to the minister of state pronouncing one of the most brilliant speeches that ever came from his lips. He has invoked my patriotism, my good sense, my calmness. He well knows how unnecessary was this appeal. I am patriotic, I am measured, I am prudent by conviction and temperament always, and above all in these supreme moments in which a single imprudence, a single indiscretion from any one, might bring down the pillars of the capital. Gentlemen, we need now a feeling that disregards mere forms and procedure, well enough for courts, but useless to this assembly; we must go to the bottom of the question, the reality of things. No speech, however eloquent it may be; no minister, not even those before us who have served liberty so well, can revive that which has ceased to exist, nor avert from us the reality that imposes itself upon us, that dominates us with its incontestible presence. That reality, gentlemen, is that, without provocation from any one, without the fault of any one, the people or the government, the Cortes or any public authority, without a cloud in the sky, the King, the actual King, the elected King, the dynastic King, has announced publicly and solemnly that he hurls from his head to the pavement the crown of Spain.

The president of the council, Mr. Zorilla, demanded the floor.

CASTELAR. "Ah, gentlemen, and Mr. President of the council, permit me in the name of all that I have done to avert a revolutionary conflict, let me ask in the name of that silence heretofore accepted by his excellency and which was a tribute to liberty and to country, let me ask in the name of the efforts he has made to avoid violent solutions, listen to me, I pray you, and do not believe I am an opposition deputy, a rhetorician, or a disputant, but that I am a patriot and a Spaniard who hopes he can help to ease Spain. If you are right I will admit it; if I am right you, too, should concede it. Do not let us decide this great question in mere pride of opinion or person. Who are we here? Those who are seated on the benches of the reactionary minority, as well as those who

represent the extreme views of the liberal party, what are any of us except lovers of our country above all, and always lovers of liberty and order? Believe me when so many and so varied are the elements that menace us; when the provinces of the north are in arms; when from the mountains of Catalonia the tempests are sweeping down to the plains; when all we have won is in peril, shall we not, all of us, join together in the common purpose of saving our liberties and our dear Spain? I ask you, if we concede these twenty-four hours demanded of us, and the King recall his abdication, do you believe he can continue to govern, to reign with authority and respect? No, never! What cabinet could he form that we would accept? What ministry would not find itself in hopeless embarrassment? Who cannot see that in any kind of a republic there would be greater stability than can henceforth be found in this monarchy? In republics there cannot be an interregnum; even in the most federative and decentralized democracies there is always a vice-president to succeed the president the instant a vacancy happens. The supreme power of the nation cannot be suspended for a day or an hour, or even a second, any more than while we live our breath can cease. You have sought a regal dynasty, with a patriotic purpose I appreciate, because you believed the monarchy less subject to oscillation, less prone to the influence of popular passions; because you believed that with a dynasty you could guide the wheel of fortune; and this monarch of yours, within a briefer period than the term of a president of a republic, without premonition or preparation, like a flash in a clear sky, abandons you, and you wish now, as a point of etiquette, that the nation shall sacrifice itself to this expiring dynasty! Oh, my friends! in what age, in what nation, let me ask my eloquent friend the minister of state, who is one of the glories of the Spanish tribune, and who knows history so well, when and where would etiquette or ceremony or any mere form of procedure be preferred to the public safety? Do you accept the acts of our fathers in 1808, when after Ferdinand the Seventh abandoned the country, they seized the crown, took away its prerogatives and privileges, and converted absolute monarchy into a constitutional government? Do you think they should have paused because the King was absent, because he had abandoned Spain? You saw Prince Bismarck concentrating the wrath of France. He had traced a line for his ambition by the treaty after Sadowa, which he called the line of the Main. This line was not to be passed, and yet Prince Bismarck passed it to form that military federation that won the salvation of Germany. Can Victor Emanuel himself wonder after confiding to the loyalty of Señor Zorrilla, and not unworthily, the person of his son, that we hasten to save ourselves without waiting for forms; can he complain when he remembers the treaty he signed with France—signed it with his own hand—a treaty vainly invoked at the moment when France, who had created Italy, found herself in the depths of an abyss, and when, in defiance of its provisions, the Italian troops passed the Tiber, entered Rome, destroyed the most ancient power known to modern history, and proclaimed on its ruins a constitutional monarchy—and this for the salvation of Italy and the glory of his crown? Does not Señor Zorrilla feel—he whom we all so much esteem for what he has done for liberty—does not this majority comprehend the grief with which I hear of our divisions as monarchical majorities and republican minorities? Are we an academy? Are we to occupy ourselves with abstractions, sacrificing the essence, which is liberty and country? Have I not heard you say in your eloquent speeches that you are indifferent to the forms of our government? Have you not always told me the substance was liberty and democracy? Now when it is not,

we who have destroyed the monarchy, when in a certain sense and within certain limits, we have helped you in this last attempt to reconcile monarchy with liberty, will you, while the monarchy falls, will you, like the old rhetoricians and Byzantine disputants, sacrifice liberty at the altar of a fugitive monarchy? It might be otherwise if this cabinet inspired every one with the confidence I feel in it; if the people knew of it what I know; if all understood its history and pledges to liberty as I recognize them, then none would have fears. But you cannot make nations like yourselves; you cannot ignore the agitation that moves Madrid and that extends to all the capitals; the distrust that permeates the country; the currents that may impel us to a fearful catastrophe. Let me plead with you; let me pray you, not as a deputy of the minority, but as a Spaniard, to avoid this peril by an immediate decision, now, while you can yet save the person of the King, although you cannot save his authority, or his crown. [Sensation.]

"Gentlemen, do you think I wish to found a party government? I repeat now what I have always said to my associates. Do you wish that the republic should be the patrimony of a few? It is the same as to desire that the air of heaven and the light of the stars shall belong to a party. The republic is for all, by all, and belongs to all. The nation orphaned is still the nation. Resuming her sovereignty over all her children she is the fond mother of all of us. Conservatives, I appeal to you in the name of the country. Behold the example of our neighbor, and let us see if after all this Spanish nation has yet left the hands of tutors. Conservatives of the revolution whom I do not see in your places in this hall, where perhaps you would have something more to look for than in the direction in which you have heretofore fixed your hopes, I say to you that if it is true that you are still devoted to the revolution, it is here; and now that you are to preserve what that revolution brought to us. And you of the majority, who have written the first chapter of our constitution, you who have proclaimed the natural rights of man, who have established universal suffrage, who have almost separated church and state, who have denounced the conscription and desired to arm the nation, you who call yourselves democrats, what will you do? What will you do when you in your turn have no King? You have no step to take, you have no sacrifice to make, no honors to renounce; you have fulfilled your duty. The King is gone; you are not to go upon your knees, you of this chamber, to persuade him to stay, because the nation does not bow the knee to any one; because by the thirty-second article of the constitution all power remains with us as the representatives of the sovereignty of the nation.

"Let us, then, accept the proposition to go into permanent session. You ask for twenty-four hours! The King asks this delay, through the president of the council. We do not ignore the King. He has ignored himself; we ignore nothing, absolutely nothing. We, the depositaries of the national sovereignty, choose to exercise a power never denied, not even by the ancient monarchs to the Cortes, a supervisory power that does not permit us to cease our vigilance over the public welfare. What right has the cabinet or the fugitive monarchy to object to the performance of this duty? Reflect, gentlemen. Do not make this a question of majority or minority, of cabinet or of opposition. Make it a question of foresight and patriotism. This chamber, for which history seems to have opened her temple, the horizon clear, all chains broken, and the conspirators against its sovereignty fugitives, this chamber can save Spain. If we do it, we will be greater than the Cortes of Cadiz. If we fail, we will deserve the ceaseless wrath of Divine justice and the eternal curse of history."

The PRESIDENT OF THE COUNCIL, (Zorrilla). "I need not speak of the difficulties with which I struggle, or the anxiety I feel in rising to speak. I shall not trouble the chamber long, because the government needs every moment for its duties. I cannot do less than say something, since it seems that I have not been understood in the observations that I have heretofore made in endeavoring to define the situation. I begin by saying to Mr. Castelar that he can ask of me nothing that I am not disposed to grant. But not even to please Mr. Castelar, or the chamber, or anybody, can I forego my honor. I have lost my parents, I have lost four sons, and not one remains to me. And if I were told to-night that I could regain them, I could do nothing inconsistent with the performance of my duty and the satisfaction of my conscience. I have another declaration to make. When I interrupted the republican speakers I meant no provocation. They affirmed that we were without a king or a dynasty. This is not true! It seemed as if they wished to precipitate events, to profit by the situation to alarm the chamber, saying that the barbarians were at the gates of the city. The proposition of Mr. Figueras is disrespectful to the cabinet and the government. His explanations and the eloquent speech of Señor Castelar have given it a special signification. They want the permanent session so that, in case the King reconsiders his purpose, they may confront him and say, 'It is too late!' and if he persists, that they may accept his renunciation. The King has not broken his compact; the majority must not deceive itself. A permanent session, if granted, can have no other object than the one I have indicated. It is designed in this permanent session to vote a guardian for us that we have not asked. You are about to say that you have no confidence in us. [Many deputies, 'No, no!'] Yes—because half-way confidence is no confidence. Having said this, do as you please; but bear in mind that if the King has taken forty-eight hours to consider and decide, he has done so at the solicitation of the council of ministers. Let each one choose his side, which we will not discuss now, for to-morrow history will do justice to all. The government has brought nothing official here for debate or action. The government does not consent that the chamber shall declare itself in permanent session. The government, in whatever is not derogatory to its dignity nor menacing to irresponsible power, would have no objection to the adoption of a proposition. But the republican minority, not satisfied with this, demands a permanent session for the purposes I have indicated. I am responsible for order and liberty. When the present exigency is over, whatever may be the solution adopted, I shall retire to some obscure corner. [Signs of impatience.] I do not wish to weary the chamber. If the solution we approach contributes to the happiness of the country all of us will rejoice, for we have only sought the public prosperity. If, on the contrary, we reach an unfortunate result, let us not hasten the catastrophe, but rather await the dread reality, as I fear it must be, when shall have disappeared that institution which we believe was the best guarantee of the most perfect order and the most absolute liberty."

Mr. CASTELAR. "The chamber will understand the situation in which we are placed by the president of the council, who believes us capable of exacting something inconsistent with his honor. I have to say that the proposition presented does not imply distrust of the government; that it is only a measure of precaution to strengthen its hands in these critical moments. The government is surprised that we do not confide in it, and does not understand that, in opposing our permanent session, it distrusts us. The president of the council has said that we wish to forestall the reconsideration of the King. What idea has his excellency of the dignity

and firmness of the monarch? The King cannot recall his resolution, and consequently we cannot occupy ourselves with his reflections. At all events, I, for one, do not believe that we can or should sacrifice the welfare of the country to personal questions."

Mr. FIGUERAS. "I do not understand how the president of the council can maintain that my proposition is derogatory to his character, nor how he can doubt its opportuneness, when, from his own mouth, we know that an event of the gravest importance to the destinies of the country is imminent. We are told the King has announced a decision, and we, proceeding in good faith, cannot suffer our liberties to be endangered. We do not insist that the cabinet shall remain here in the chamber, nor is it necessary that those deputies who do not share our apprehensions should remain in this place. We do not propose to deliberate; we will remain here without action, but organized and ready for action. Unless we do this, I predict days of mourning and blood for Madrid; blood and mourning that will fall on the heads of those whose obstinacy refuses to seek a remedy."

A pause followed, in which the president of the council, the minister of state, and several others of the cabinet were in consultation in their seats. It was evident a difference of opinion existed between Mr. Zorrilla and Mr. Martos. Mr. Martos was about to quit the blue bench; his colleagues earnestly dissuading him, secreted his hat under the bench, and he resumed his seat with much apparent reluctance. Mr. Zorrilla then rose to leave, and repelling the efforts to detain him, he retired from the chamber. Whereupon

Mr. MARTOS said, "I have not perhaps clearly understood Mr. Figueras. The circumstances are grave, and, according to my latest information, graver than we could have thought. I beg, therefore, that Mr. Figueras will explain his purpose. The government desires, if it can do so consistently with the requirements which its dignity imposes on this most unhappy occasion, to be among the first in averting the evils foreshadowed by Mr. Figueras, and which may not unreasonably be apprehended. Wishing thus to avoid every motive for dissension, and trusting there may be no occasion for a vote, I pause for Mr. Figueras's explanation."

FIGUERAS. "I have already said that we shall wait here, organized, but without deliberating, until the government decides upon its course; that we shall discuss nothing, remaining, however, in our places, regarding ourselves as in permanent session."

MARTOS. "Mr. Figueras desires that, without action, we remain assembled here prepared for any contingency, the flag flying over the palace as the sign that the chamber is in session. Is this the proposition? [Cries of 'Yes, yes!'] Well, then, would to God that with the same facility we might settle the difficulties of to-day and those that may come to-morrow."

The PRESIDENT OF THE CHAMBER. "Congress orders a permanent session without deliberation, and as the presiding officers will remain here, I desire that a committee be named to remain with us." (Many deputies: "Let the president name the committee.")

The secretary then read the names of the committee appointed by the president, and the session was, *pro forma*, suspended at nine o'clock at night, after a sitting of six hours.

During these proceedings in the chamber the crowd outside had increased to thousands. The usual entrance for deputies was besieged by an inquisitive throng whose curiosity was from time to time gratified by the appearance of a prominent deputy, assuring them of a prompt and peaceful republican solution. The republican deputies had issued

a printed address, which was posted through the streets of Madrid, advising their supporters to abstain from all violent demonstrations. The republican directory, comprising Castelar, Figueras, and Pi y Margall, communicated assuring intelligence to their friends in the provinces. Ministers had likewise announced to provincial governors and captains-general the probable abdication of the King, and enjoining the strictest vigilance and utmost zeal in maintenance of order.

Satisfactory answers had been received from most of the provinces. The only ground for apprehension seemed to be that the suspension of the sitting of the Cortes without action might be made a pretext for disturbances. It was understood that the conservative leaders were in council during the afternoon and evening at the house of Mr. Sagasta. They expected to be summoned by the King to form a new cabinet, efforts having been made by the Duke of Fernan Nunez, General Concha, Admiral Topete, and others, to persuade the King to desist from his proposed abdication and change his advisers. It was even said on good authority that a deputation of army officers, backed by General Concha and others, proposed to the King to authorize them to put themselves at the head of the troops of the Madrid garrison, and enable the King to dismiss Zorrilla and his colleagues, dissolve the Cortes, suspend the constitution, and maintain the throne. The King disapproved of all these suggestions. He said he had sworn to obey the constitution; that he had kept faith with the country, approving all measures sanctioned by the Cortes, and had endeavored to do justice to all parties; that all the factions, except the one in power, were habitually arrayed against him, and that it was too late now for him to give his confidence to those who had kept aloof from the court until no honorable resource was left but to return his crown to the Cortes, from whom he had received it, and leave the country free to determine its destinies. Marshal Serrano arrived in town the same evening from the south, and it was expected that he would put himself at the head of a conservative movement, but without the support of the troops, from whom he had long been separated, and in presence of so formidable a popular rising in favor of a republic, the reactionary military leaders shrunk from the responsibility and risks of action, preferring to await events and hold themselves ready to profit by any favorable opportunity that might present itself. The government called out several battalions of citizen-militia which guarded the public buildings and squares during the night. The main body of the garrison remained in their quarters under arms. Thus the night was passed in tranquillity.

At 3 in the afternoon of Tuesday, the 11th, the chamber of deputies resumed the sitting suspended the night before, with an announcement from the presiding officer that a communication had been received from the government, which the secretary read as follows:

To the President of the Chamber of Deputies:

YOUR EXCELLENCY: At half-past one this afternoon, accompanied by the minister of state, I presented myself in the royal chambers, in compliance with His Majesty's request, and received from the King the inclosed document, which I have the honor to transmit to your excellency, in order that it may be communicated to Congress.

MANUEL RUIZ ZORRILLA.

MADRID, February 11, 1873.

The secretary then proceeded to read the abdication of the King in the following words:

To the Chamber:

Great was the honor bestowed upon me by the Spanish nation when it elected me to occupy its throne, an honor all the more appreciated by me since it was offered to me environed by the difficulties and dangers which accompany the task of governing a country so deeply agitated.

Animated, however, by the firmness of purpose natural to my race, which seeks rather than shuns danger; fully determined to seek my sole inspiration in the good of the country, and to raise myself above all party level; resolved to fulfill religiously the oath I took before the Constituent Cortes; and ready to make all manner of sacrifices in order to give to this heroic nation the peace it needs, the freedom it deserves, and the greatness to which its glorious history and the uprightness and constancy of its sons entitle it, I thought that my limited experience in the art of governing would be compensated by the loyalty of my nature, and that I should find powerful aid in warding off the dangers and conquering the difficulties that were not hidden from my view in the sympathy of all those Spaniards who, loving their native land, were desirous of putting an end to the bloody and barren struggles which for so many years have been gnawing at its vitals.

I realize that my good intentions have been in vain. For two long years have I worn the crown of Spain, and Spain still lives in continual strife, departing day by day more widely from that era of peace and prosperity for which I have so ardently yearned. Had the enemies to her happiness been foreigners, then, at the head of our valiant and tried soldiers, I would have been the first to give them battle. But all those who, with sword and pen and speech, aggravate and perpetuate the troubles of the nation, are Spaniards; they all invoke the hallowed name of fatherland; they all strive and labor for its well-being; and, amidst the din of combat, amidst the confused, appalling, and contradictory clamor of the contestants, amidst so many and so widely opposed manifestations of public opinion, it is impossible to choose the right, and still more impossible to find a remedy for such vast evils. I have earnestly sought a remedy within the bounds of law. Beyond this limit he who is pledged to obey the law has no right to go.

None will attribute my determination to weakness of spirit. No danger could move me to take off the crown from my brows if I believed that I wore it for my country's good. Neither have I been influenced by the peril that threatened the life of my august wife, who, in this solemn moment, joins me in the earnest hope that in good time free pardon may be given to the authors of that attempt.

Nevertheless, I am to-day firmly convinced of the barrenness of my efforts and the impossibility of realizing my aims.

These, deputies, are the reasons that move me to give back to the nation, and in its name to you, the crown offered to me by the national suffrage, renouncing it for myself, my children, and my successors.

Be assured that, in relinquishing the crown, I do not give up my love for this noble and unhappy Spain, and that I bear away with me from hence no other sorrow than that it has not been possible for me to accomplish for her all the good my loyal heart so earnestly desired.

AMADEO.

PALACE OF MADRID, *February 11, 1873.*"

The PRESIDENT. "Gentlemen of the chamber, the renunciation of the crown of Spain by Don Amadeo, of Savoy, remands to the Spanish Cortes the sovereign authority over the kingdom. This event would be grave if, in the presence of the majesty of the Cortes, anything could be grave or difficult. As this chamber cannot, by itself, exercise the powers now devolved on Congress, the presence and co-operation of the senate being necessary, I have the honor to propose that a message be addressed to that body, which is already written, in order that both chambers, representing the sovereign authority, shall take such action in relation to the document just read as the emergency demands.

The motion was agreed to without debate.

Mr. Salaverria and Mr. Ulloa, leaders respectively of conservative sections of the chamber, addressed the house, expressing their sense of the gravity of the situation; declining, however, to present any proposition, and declaring their willingness to support any government that might be established which would afford guarantees of peace, public order, good administration, and the maintenance of the national territory intact.

Castelar acknowledged the patriotic attitude indicated by the remarks of the conservative speakers. He said the declarations to which they had just listened in this temple of the laws gave him hope, gave him assurance, that now, as in 1808, all Spaniards would forget their differences in a

common effort for the salvation of the country. The scruples of these gentlemen were legitimate, and had been expressed with a propriety of phrase and a dignity for which the chamber could never be sufficiently grateful, and that history would record with applause. "It is my duty," said Castelar, "to point out the singular fact that all is foreseen in the constitution except the present contingency, when an entire dynasty renounces the crown. The abdication of a monarch in favor of his legitimate successors is provided for. But a monarchical constitution could not be expected to anticipate the renunciation of the reigning dynasty. In these supreme circumstances, when it is necessary that authority shall not cease for an instant, while it is becoming that we should follow prescribed legal forms as far as possible, the sovereign authority of these chambers must interpose and supply a remedy for a case not contemplated by the framers of the constitution. We have ever seen in times of danger, as well in the war of independence as in the civil war, that the country has heard but one voice, the Cortes—'Let the Cortes save the monarchy!' 'Let the Cortes save liberty!' 'Let the Cortes save order!' Now, then, let the Cortes save the honor, the independence, and the integrity of the country. I have but one observation more to make. I have never declined responsibility. I have always declared that the great problem is to ally order with liberty. Shoulder to shoulder with my comrades I have fought all extremes and all demagogues, and I promise you, on my honor and conscience, that while my life is spared, and while I have a voice to speak, I will make every sacrifice for the honor of the nation, for the preservation of its territory, for social order, and for the union of all Spaniards."

After a brief recess, at half past 4 p. m. the secretary, Moreno Rodriguez, read the following message from the senate :

To the chamber of deputies :

In view of the abdication of His Majesty and of the message of your honorable body, the senate considers it necessary that the two houses should meet as one assembly to provide for the public safety. In communicating this resolution to the chamber of deputies, the president of the senate is authorized to confer with the president of the chamber of deputies, to the end that this union may be effected.

PALACE OF THE SENATE, *February 11, 1873.*

LOREANO FIGUEROLA, *President.*

FEDERICO BALART, *Senator, Secretary.*

VICENTE DE FUENMAYOR, *Senator, Secretary.*

The PRESIDENT. "Ushers, inform the senate that the chamber awaits them."

The senate, preceded by two mace-bearers, entered the chamber.

The PRESIDENT OF THE SENATE. "Mr. President of the chamber of deputies, the Spanish senate, in virtue of a resolution it adopted, and which I have had the honor to communicate to you, comes here to unite itself with the chamber and form one assembly, in presence of the necessities of the country."

The PRESIDENT OF THE CHAMBER. "The senators will take seats, in order that the two co-ordinate legislative bodies may constitute themselves the sovereign Congress of Spain."

The senators being seated promiscuously among the deputies, the president of the senate occupying a place to the right of the president of the chamber, the latter, as presiding officer of the sovereign Cortes, said :

"The chamber of deputies and the senate united, constituting the Spanish Cortes, are in session. Let this be recorded in the minutes. And, by the privilege of my seniority, which no one can envy, I preside.

On behalf of the chamber of deputies, Messieurs Lopez and Rodriguez will act as secretaries. Senators Balart and Benot will act as secretaries, representing the senate. I now declare that the sovereign Cortes of Spain is organized and in session."

Thereupon Secretary Rodriguez read again the act of abdication.

The MINISTER OF STATE, (MARTOS.) "The president of the council of ministers is unable to present himself before the chambers in these grave, and for us most unhappy circumstances, to address the sovereign Cortes of Spain. In endeavoring, as far as I can, to fill his place, I have a few words to address to you. Neither the weight of responsibility pressing upon me nor the solemnity of the situation surrounding us permits anything like a speech from me at this moment. The occasion demands from us prudent, salutary, and great acts. I have only to say to you, gentlemen, that His Majesty the King of Spain, Don Amadeo I, of Savoy, to whom we still hold the relation of responsible advisers, has announced to us this morning his irrevocable resolution to resign the crown into the hands of the sovereign Cortes, the representatives of Spain, from whom he received it. In view of this impressive circumstance, it is needless for me to advert to the obvious responsibilities and duties devolving upon this assembly, duties which it cannot fail to comprehend and fulfill. With this communication, gentlemen, the powers of the present government cease. In the name of my colleagues, in their behalf and for myself, I now surrender the powers we received from the King to this assembly, which from this moment becomes the sole and only sovereignty. May Almighty God grant to all of us the wisdom of which the country has need! May all Spaniards unite with us, as the country may rightfully demand of them, for the salvation of liberty and the guardianship of the interests of society."

Mr. Martos and his colleagues then quitted the blue bench and took their seats among the deputies.

The PRESIDENT, (RIVERO.) "Do the sovereign Cortes accept the resignation of the crown tendered by Don Amadeo of Savoy?"

Accepted without a dissenting voice.

The PRESIDENT. "Do the Cortes agree to send a message to this illustrious prince, expressing their regret and accepting the resignation?"

This was agreed to unanimously.

The PRESIDENT. "Shall a committee be appointed to prepare and report a message?"

This was agreed to.

The PRESIDENT: "It is always difficult to appoint committees."

Mr. JUAN BAUTISTA ALONSO: "Let the president name it."

The PRESIDENT: "Is it the order of the Cortes that the president name the committee?"

It was so ordered.

The PRESIDENT: "I ask permission to retire to select the committee. Meanwhile the president of the senate will occupy the chair."

After a brief interval the president announced the following committee on the message to the King: Figueras, Castelar, Nunez de Velasco, Marquis of Sardoal, Rivero, Cervera, Herrero, Benot, Chao, Rojo Arias, Fuenmayor Belart:

After some twenty minutes had elapsed Mr. Castelar ascended the tribune and said:

"I should address a word of explanation to the chamber before reading the report. Naturally the members of the committee were not agreed upon the terms in which the address to the King should be written. But they have understood it was not a moment to insist upon personal

or party sentiments. It is believed the message is the faithful expression of the views of the majority of the sovereign Cortes."

Mr. Castelar then read the message, of which the following is a translation:

The National Assembly to His Majesty Don Amadeo I.

SIRE: The sovereign Cortes of the Spanish nation have heard with solemn respect the eloquent message of Your Majesty, in whose chivalrous words of uprightness, of honor, and of loyalty they have seen fresh witness born to the high endowments of intelligence and character that distinguish Your Majesty, and of the exalted love you bear to this your second country, which, generous and brave, cherishing its dignity even to superstition, and its independence even to heroism, can never, never forget that Your Majesty has been the head of the state, the personification of its sovereignty, and the chief authority within the sphere of its laws; nor can it fail to discern that, in paying honor and praise to Your Majesty it honors and ennobles itself.

Sire, the Cortes have been faithful to the commands of their constituents, and guardians of the institutions they found already established by the will of the nation in the constitutional assembly. In all their acts and decisions the Cortes have restrained themselves within the bounds of their prerogatives, and have respected the will of Your Majesty and the rights belonging to Your Majesty under our constitution. While proclaiming this loudly and clearly, in order that upon them may never fall the responsibility of this issue, which we accept with regret, but which we shall meet with energy, the Cortes unanimously declare that Your Majesty has been a faithful, a most faithful observer of the respect due to these chambers, and that you have faithfully, most faithfully, kept the oath made when Your Majesty accepted from the hands of the people the Crown of Spain; a glorious, a most glorious record in this age of ambitions and dictatorial sway, when, seated on the inaccessible heights of a throne, which only a few privileged ones ascend, the least adventurous of rulers have not restrained their ambition from absolute authority.

Your Majesty may justly say, in the privacy of your retirement, in the bosom of your lovely native land, and by the fireside of your family, that if any human being could have checked the irresistible course of events, Your Majesty, with your constitutional education and your respect for established law, would have done so, absolutely and completely. Convinced of the truth of this, the Cortes, had it been in their power, would have made the utmost sacrifices to induce Your Majesty to desist from your purpose, and to recall your renunciation.

But, knowing as they do the unswerving character of Your Majesty, justice to the maturity of your ideas, and the firmness of your purpose, prevents the Cortes from praying Your Majesty to reconsider your determination, and decides them to announce that they have assumed the supreme power and sovereignty of the nation, in order that under such critical circumstances and with the promptness demanded by the gravity of the peril and the transcendence of the situation, they may minister to the salvation of democracy—the base of our political structure of liberty—the soul of all our rights and of the country—our immortal and loving mother, for whom we are all resolved to freely sacrifice not only our individual ideas but also our name and our very existence.

Our fathers battled with even more adverse circumstances at the beginning of this century, and, inspired by these ideas and these sentiments, it was given them to conquer. Abandoned by their King, their native soil overrun by foreign hosts, and menaced by that giant mind that seemed to possess the talisman of destruction and of war, the Cortes driven to an island at the furthest verge of the country, not only saved their fatherland and wrote the glorious epic of its independence, but upon the wide-scattered ruins of the old social structure they laid the foundation of the new. The Cortes feel that the Spanish nation has not degenerated, and they trust that they themselves will still less degenerate from the austere and patriotic virtues that distinguished the founders of liberty in Spain.

When all dangers shall have been warded off, and all obstacles overcome; when we shall have emerged from the difficulties that attend every epoch of transition and of crisis, the Spanish people—which, while your Majesty remains upon our noble soil, will offer you every mark of respect, of loyalty, and of deference, because it is due alike to your Majesty, to your virtuous and noble consort, and to your innocent children—the Spanish people cannot offer you a crown in the future, but they will then offer you another dignity, the dignity of a citizen in the midst of a free and independent people.

PALACE OF THE CORTES, *February 11, 1873.*

The reading of the message was frequently interrupted by loud applause from all parts of the chamber.

The PRESIDENT: "This report, I do not hesitate to say, honors the Spanish nation, and demands from us that we name a committee to present the address to His Majesty. I also think it proper that we should appoint another committee to accompany His Majesty to the frontier. Before all, and above all, we are gentlemen, and as such we should deport ourselves."

Both committees were ordered to be appointed by the chair.

President Rivero resumed the chair, and said: "A proposition is in the hands of the chair to be submitted to the chamber. We are approaching a solemn moment in the national history. I count upon your calmness, dignity, and prudence, since these are the virtues of sovereignty."

The proposition was read, as follows:

The undersigned ask Congress to approve the following act:

The national assembly, assuming all power, declares that the form of government of the nation is republican, remitting to a constitutional convention (*cortes constituyentes*) the organization of this form of government.

This assembly will choose an executive, removable by and responsible to the chamber.

PI Y MARGALL.
NICOLAS SALMERON.
FRANCISCO SALMERON.
LAGUNERO.
FIGUERAS.
MOLINI.
FERNANDEZ DE LAS CUEVAS.

PI Y MARGALL: "I am not sure, gentlemen, if I shall know to-day how to maintain the serenity that you are accustomed to find in my speeches. I am profoundly moved. But my task is less difficult than it would seem, since I have nothing to say that is not already in the mind, in the hearts, and in the conscience of all present. You elected a King and that King has resigned the crown he received from you. You have no government. The ministers who have received their authority from the hands of the King have disappeared with the authority of the person from whom they derived their trust. There remains but one legitimate source of authority, the Cortes, and necessity compels this body to assume all power; you yourselves have confirmed what I say by your acts. If the Cortes hold the legislative power, they must create an executive authority. We propose that this be chosen by a direct vote of the assembly, and that it be charged with the duty of enforcing your decrees. Are we to have another interregnum? Should we leave the dynasty to pass from its orbit powerless and not replace it by another form of government? You all know the fruits monarchies have yielded us. You established a constitutional monarchy in the person of a Queen by divine right. You could not reconcile it with liberty. The people desired reform and progress. The people insisted upon the sanctity of personal rights, and that Queen and her father before her had no thought besides ignoring individual liberty and arresting the progress of the Spanish people. Finding her incompatible with your liberties, you banished her from the country; you then attempted to establish an elective monarchy, and you chose a King impersonating it. You see the result. He confesses himself to have been unable to overcome the rancor of parties and the discord that devours us. Our dissensions have multiplied; our animosities have spread and extended even to the parties that made the revolution of September, 1868. You are convinced that monarchy is incompatible with the political rights you have created. It is necessary,

therefore, that we go to the republic. You who have established the great principle of national sovereignty in the people, cannot do less than accept a form compatible with this principle, and this you do not find in a monarchy which circumscribes the power in the hands of a family. You cannot return to the monarchy. Privileges of caste have disappeared. It is impossible for you to merge the sovereignty of the nation in a dynasty. Bear in mind the ideas and the movement of opinion of your age. In other times, thanks to a religious belief widely accepted, there were dikes to bound the movement of thought and make hereditary powers possible. But in these days of free opinion how is it possible to suppose that a single person can control the currents of the popular will? We need movable powers, and for these the republic must be established. The executive should be so constituted that it may ever be in harmony with the ideas of the Spanish people. Look at the present state of Spain! Reactionary forces appear in many provinces, and you all know that a standing army is incapable of putting down these factions. It is necessary that the people rise in arms to put an end to this civil war. To do this you must give the people a flag they will accept and under which they will fight. This you cannot do in the name of monarchy. It is necessary, then, that this sovereign assembly proclaim at once the republic, leaving to a constitutional convention, to be hereafter chosen, the duty of defining the organization and form of the republic. We are federalists. We believe that in a federation lies the hope of the country. But we understand that in these moments all should make sacrifices, and ours is to forbear establishing now a federal form of government, leaving that determination to a future Congress. If we are agreed in this, we for our part are satisfied. Otherwise we must insist upon our attitude, since it is impossible for us to sacrifice our convictions. To-day we only ask that you proclaim the republic. Afterwards we shall know the form of republic the country desires."

The proposition having been again read, was taken into consideration without a division. The debate was thereupon declared open.

MR. ROMEO ORTIZ. "It has never been the doctrine of the liberal parties in Spain that a constitution can be modified without the consent of a convention elected expressly for that purpose. If we have had parties who thought otherwise, they were not liberals. With this observation I have only to affirm what has already been said by Mr. Ulloa. It would not become those of us who are monarchists by conviction to abandon our ideas and suddenly turn republicans. We are nevertheless disposed to lend our loyal and sincere support to the power that may be here created to sustain public order and maintain the integrity of our territory."

SALMERON, (DON NICOLAS.) "These are critical moments, when we not only have to decide the questions presented by the abdication of the Crown thrown into our midst by Don Amadeo, but we are bound to organize the country; and, to raise up the institutions, we need to maintain social order and liberty. In this work we should form a compact phalanx; we must be prepared to sacrifice our lives, and, what is more, our name and our dignity, on the altar of the higher dignity of the Spanish nation. It is indispensable that we comprehend how we were yesterday divided by party passions under the monarchy; that, if heretofore factions have struggled with factions for power, to-day we have no monarchy to distract us. In this chamber, in presence of this sovereign assembly chosen by universal suffrage, we have already the republican form of government in which may be united every political and social aspiration. If you, the conservatives, say you are ready to support that

government, to maintain social order, raise yourselves a little higher and say, 'We come to assist in founding an order of things indispensable in this country after the ruin of the monarchy.' For you must realize that with the fall of the monarchy nothing legal remains but the first chapter of the constitution and this Cortes, the representatives of the national sovereignty. If you love your country as you say, if you are only animated by the desire of contributing to its welfare, accept the ideas within which we can all prosper. Let us all unite together. We, for our part, repel no one; republican liberty belongs to a social organization under which may live those who cherish the most opposite opinions. Representatives of the Spanish nation, in this moment all Europe looks upon us. Let us imitate our forefathers, who redeemed our soil and reanimated our patriotism. For us there are neither conquerors nor conquered; neither republicans of yesterday nor of to-day. Let us all move forward together, confiding in the justice of our cause, resolved to save Spain and maintain liberty."

RUIZ ZORRILLA. "I do not propose at this moment to take part in the debate. I rise only to say to the representatives of the country that before approving or disapproving the proposition under discussion, it is indispensable to suspend the session, if only for a few minutes, in order that we may have a provisional government that may tend to the preservation of order in Madrid and in the provinces."

The PRESIDENT, (RIVERO.) "The president answers for order throughout Spain; [applause;] and to this end he relies on the co-operation of your excellency and your worthy colleagues."

RUIZ ZORRILLA. "Your excellency cannot expect our co-operation otherwise than as deputies or as senators. It is my duty to say that there is no government. Those of us who lately constituted the government, with much glory to ourselves, in the name of the monarchy, have ceased to exercise authority. And here you have not foreseen even the first necessity of a country, above all when it finds itself in the circumstances which surround us. If a telegram should come about the Carlists, [laughter,] or about any occurrence that might take place in any province of Spain, there is nobody who could receive it. [Laughter.] From the moment that Mr. Martos said that we had relinquished our authority as ministers, that we would not give attention to anything that might happen, you should have attended to this necessity. If a telegraphic dispatch were received now, saying that the Carlists had occupied an important city, or that one of our generals refuses to accept the situation, to whom could this be delivered, and who could take the proper steps to meet the emergency? [Loud murmurs. The president calls to order.] Gentlemen, understand the situation in the depths of your conscience and provide for the needs of the moment. I, gentlemen, am an honorable man, who has always performed his duty to the monarchy and to liberty, and when the monarchy and the dynasty disappear I offer fervent prayers that your efforts and measures will correspond to your impatience for that which I do not believe can last long in this country. [Murmurs of dissent.] This is a matter of opinion, and I regret to find myself interrupted; my position is not understood. I have been president of the council of ministers, and I have the consolation, in view of catastrophes which may come, that during the time that I have been at the head of the state, not one drop of blood has been shed. If I have interrupted this debate, it has been to call your attention to an immediate necessity. I am guided only by a sentiment of patriotism. This is said to you by one about to disappear from public life, and who has only one remorse, that of having returned to public affairs at the instigation of his friends,

disregarding, for once only, his own proper resolution. I think that my suggestion should not be disregarded, and I say this to you with all the more weight, because I expect to find myself under the necessity of resisting the aspirations of those who believe that after to-morrow we shall live in the world of Dr. Pangloss. I appeal to you by the love of that liberty which I have ever defended, that you give attention to the supreme duty imposed upon us by the extremely critical circumstances confronting us, a duty incumbent upon every society. I ask nothing in the interests of monarchy nor of the dynasty. They have disappeared. Nor in the name of my party, for it has ceased to exist. I appeal to you in the name of common sense. At this moment it is impossible to protect the interests of the country without some one in charge of the ministry of war and a secretary of interior; since it is impossible that the president of this assembly, who must preside over your deliberations, can at the same time perform executive duties that may be demanded of him at any instant. I do not wish to fatigue longer the attention of the assembly, and I conclude, praying that you will suspend the session for a moment and name a government, however provisional it may be, which may act until your further pleasure can be known. That is all I have to say."

The PRESIDENT, (RIVERO.) "The moment when the late ministry resigned their powers into the hands of the assembly, this body resumed them. In my opinion, although we have no precedent to guide us, when the sovereign assembly undertakes the functions of government, my authority should be sufficient until another is named. I, of course, may rightfully count upon the retiring ministers to assist me in the preservation of order until their successors are named. Relying on their support, and accustomed to preserve my equanimity in the most trying circumstances, there is no occasion whatever for the observations with which Mr. Zorrilla has interrupted the debate. If there is perturbation in Madrid, if disturbances happen in the provinces, I shall rely upon the ministers to suppress them, during the short period in which their assistance will be necessary. Is it possible, sovereign Cortes, that the functions of government can become inanimate? At the worst, this situation cannot last more than an hour or two, allowing to this debate the amplitude that the patriotism of the chamber may deem necessary. I am sure that we are all anxious to hasten the formation of a government, [Yes! Yes!] and that within two hours we shall have a government greater and stronger than we have ever had, invigorated by the co-operation of all the representatives of the country. Is this not enough? In order not to interrupt the discussion, I propose a very simple remedy—that we agree at once that the late cabinet resume their seats on the ministerial bench, exercising executive functions until the assembly names their successors."

The proposition was approved by the chamber.

ZORRILLA. "I ask the floor." [Murmurs.]

The PRESIDENT. "Order! Gentlemen of the late cabinet: in the name of the country and of the national assembly, I ask you to take your places on the ministerial bench, and discharge the functions of your separate offices."

MARTOS. "I ask the floor."

The PRESIDENT. "The question is not debatable. In the name of the assembly, and to support its authority, I insist that the late ministers obey."

ZORRILLA. "I am not disposed to go to the ministerial bench, although all my companions should do so, and your excellency will permit me to explain myself on this point." [Violent demonstration.]

The PRESIDENT. "The ministers will be pleased to go to their bench."

ZORRILLA. "Take notice that I have resigned."

FERNANDEZ DE LAS CUEVAS, (addressing the president.) "Who has given to your excellency a dictatorship?"

MARTOS. "Mr. President, here in my place as a deputy, I demand to speak."

FIGUERAS. "I demand to speak." [Agitation.]

The PRESIDENT. "There is no debate."

FIGUERAS. "Permit me, your excellency, to say that the country demands from the assembly that it shall choose a government."

MARTOS. "Who strips me of my right as a deputy? Nobody in the world shall do it. [Applause in some benches.] Have I the floor, Mr. President?"

The PRESIDENT. "I will speak now, and afterward you may address the house. It is best to be calm when we are discussing questions of such gravity. This is the position of the president. He believed, and believes, that all powers devolved upon him in the name of the assembly. [No! No!] I am mistaken. I believed it my duty, as the president of a sovereign assembly, to exercise gubernatorial authority. [Noisy interruptions.] It is expedient that you hear me—above all for the sake of public order. I believe that, as events have happened here, analogous to those which have transpired in like circumstances in other countries, we may adopt the means elsewhere taken. What have we here? Two co-ordinate legislative bodies, assuming in joint session the national sovereignty. The executive has resigned, and I ask who else than the president of the assembly, until a ministry be appointed, can exercise executive authority? [Many deputies: 'Yes; yes;' others: 'No; no.' Confusion.] If you will not hear me I retire. You see that I am calm. Maintain the same calmness that I preserve. Do you think that it is from pride on my part that I desire to govern, as if my duties as presiding officer of this body were not weighty enough for my strength? Have you not ordered that the late ministers should retain their functions until the appointment of their successors? Has this not been agreed to? [Protests.] If you believe the proposition has not been approved, I will submit it to another vote. [A voice: 'The ministers refuse to accept.'] Is the proposition agreed to? [Many voices: 'Yes; yes;'] Well, then, I believed, relying on their patriotism, that the ministers would resume their places and discharge their duties, however difficult. Had I not a right to rely upon their acceptance? Will they not obey the order of the assembly, and accept the trust and confidence which this vote signifies? Do they accept or not?"

MARTOS. "I demand the floor."

The PRESIDENT. "Well, then, you may speak, and I leave to you the responsibility, trusting to your patriotism and prudence for a due consideration of the circumstances surrounding us."

MARTOS. "I shall speak with a moderation required by circumstances, and with the respect and consideration I owe to the assembly. I begin by declaring that I have witnessed with grief an incident I have not provoked, and for which I have not the least responsibility. I have only insisted upon my right as a deputy, which is at last conceded to me, after an undue resistance that might have been wisely avoided. It is not well that, against the will of all, tyranny should begin the day that monarchy ends." [President Rivero here left the chair, which was occupied by Figuerola, of the senate. Several deputies made unavailing efforts to dissuade Mr. Rivero from leaving the chamber.]

"Believe me, gentlemen, that neither of my worthy colleagues in the late cabinet is capable of declining any responsibility, above all in diffi-

cult circumstances. But it seems to me, and I shall rejoice if in this I was mistaken, that an imperious demand was made of us to assume certain functions. If we had been invited in a different tone to assume those powers, we might have obeyed, yielding to the desire and the vote of this sovereign assembly. In the name, then, of my esteemed colleagues, I have to say that, having received an authority from the late King, and His Majesty's functions having ceased by reason of his abdication, our duties ceased when that abdication was accepted by the Cortes. Recognizing the sovereignty of this assembly as superseding that of the King, we resigned into the hands of the Spanish Cortes the power we had received from His Majesty. What are we considering now? The creation of an authority responsible for order, in which we are all equally and deeply interested. On this point I have done nothing more than defend my prerogative, and I appeal to the chamber to say whether I should be worthy of a place among them for an instant, if I had failed to repel the obstacles interposed to the free exercise of my right as a deputy."

RAMOS CALDERON. "I ask the floor."

The PRESIDENT, (Figueroa.) "I appeal to the prudence of Mr. Martos, in order that to-day we may not have speeches, but acts."

MARTOS. "I have but little to add; I have not been able to consult my colleagues, but they inform me that they agree with what I have said. I maintain that the assembly is sovereign, that sovereignty is authority, and that authority is responsibility and obligation. The executive duties springing out of the present situation devolve upon the presidency of the Cortes a moral obligation, resting at the same time upon each and every one of us, and which I accept for my own part, to sustain the president of this assembly in the measures he may see fit to adopt. For the maintenance of public order, means are at the disposition of the representative of the Cortes, or of whomsoever may be charged with the exercise of its power. It is not necessary to this end that we should resume our seats on the ministerial bench. Here in our proper places we are at the service of the president of the assembly and the country. In conclusion, gentlemen, it should be observed that one branch of the proposition we are considering provides for the nomination of a government. And I appeal to my friend, Mr. Zorrilla, and to all in this assembly, that we lay aside all motives of discord, and withdraw as I withdraw on my part, the harsh expressions I may have uttered in defense of my right as a deputy. I beg that all may say as I say, let us vote the proposition and create a government."

President FIGUEROA. "After the noble words of Mr. Martos, and believing myself a faithful interpreter of the wishes of the president of the assembly, I trust that whatever he may have said may be interpreted in a like manner, inasmuch as it was only his intention, in which I am sure the assembly coincided, that we should not remain without a recognized authority. Appreciating as I do the motives of delicacy influencing the members of the retiring cabinet in hesitating to resume their functions, and as the assembly cannot oblige them to do so, I appeal to their patriotism to lay aside all questions of form, and if it be only for an hour, to take their places on the ministerial bench, and provide the necessary safeguards for public order. I beg, therefore, that these gentlemen will comply with the resolution of the assembly for no other reason than that it is the expressed wish of this body."

MARTOS. "We have not desired to occupy the ministerial bench because the assembly is about to adopt grave and important measures in which we desire to take part, and because there is no necessity for the

action suggested. But if, notwithstanding, it be the wish of the assembly, for one, I will not refuse."

PRESIDENT FIGUEROLA. "I pray that Mr. Martos and his colleagues of the cabinet will exercise the executive functions intrusted to them by the assembly."

MARTOS. "It is unnecessary that we leave our seats. For the satisfaction of the president I will add that we are transacting business through the sub-secretaries of the departments, and that General Cordova, not as minister, but as general of the army, and as a patriot, is present in the war office taking care of the interests in its charge."

The committees to present the message of the Cortes, and to accompany the King to the frontier, were then announced by the president.

PRESIDENT FIGUEROLA. "The gentlemen designated are requested to hold themselves in readiness to present the message to the King, as well as to accompany His Majesty at the hour fixed for his departure."

ZORRILLA. "I beg the president to permit me to say a few words in relation to the incident just occurred, and that I have provoked. I shall be brief. The president proposed that the retiring ministers should continue in their places, and I wish it to be understood that I cannot accede to this request while the proposition under consideration is pending. I have no desire to prolong the debate, but I believe it indispensable that there should be some constitutional authority, and above all, in the war and interior departments. Although I cannot myself yield to the wish of the president, I have said to my colleagues that they should place themselves at the disposition of the assembly; for it is absolutely indispensable that this assembly name somebody who can instruct a provincial governor, or a general, as to what he should do"— (Loud interruption, which made it impossible to hear the speaker, who sat down.)

Mr. OLAVE. "We would have had a government before now if your excellency had not interrupted the discussion."

Many members here demanded the floor, and there was great agitation.

Mr. FIGUERAS. "I ask to speak upon this incident."

The PRESIDENT. "The incident is terminated. Señor Bazzanallana has the floor on the main proposition, and I beg him to be brief."

MARQUIS DE BAZZANALLANA. "The president knows, by long experience, with what deference I always yield to his suggestions. This is a day to be brief in speech but abundant in deeds. For this reason I was silent in the senate, waiting our presence here to make known our attitude in the present circumstances. For the same reason my friend, Mr. Suarez Inclan, remained silent. We are asked to vote a form of government we have never believed in. We are asked to assist in establishing a republic. We can bow our heads before the force of events, and overlook irregularities to which we have in no manner contributed. I shall not undertake to reply to the arguments of Mr. Pi y Margall. Inspired only by sentiments of patriotism, we offer our co-operation to the end that the government which may be established shall be strong, and have the means necessary to give order and peace to this unfortunate nation. We are not republicans; we shall vote against the republic. And we trust that the republican party will find no reason in what may happen to the country to abate their pretensions. So far as we have yet got into this century, the republic is the only form of government not yet tried in Spain. The country thinks it can make the experiment. I say, 'Consistent republicans, you who have in your ranks great orators and illustrious writers, God grant you may prove you possess great statesmen!' If this happen, it would demonstrate that our calamities do not spring

from governments, but result from intrinsic causes, all the more easily alleviated now that the last effort is to be made."

MARQUIS DE SARDOAL. "My speech will have the brevity demanded by the circumstances. I have risen for myself and for the Duke of Veragua and other friends, to explain the meaning of our votes. You will understand that, being yesterday monarchists, we continue to be so; that those of us who have heretofore believed liberty compatible with monarchy, do not admit that the accident of the abdication of the late King has affected the principle which constitutes the foundation of our opinions. We cannot say to those who have always been republicans that our monarchical faith is impaired. Such a declaration would justify your suspicions, and we desire to retain your respect. The situation is difficult, the country and social order are menaced and impel us to action; we shall yield to the exigency, as far as our dignity permits, because above our opinions and antecedents is the welfare of Spain. Comprehending that the monarchy we have defended is now impossible, comprehending that monarchy is not an abstraction and can only be realized in the establishment of a dynasty, and this being here and now impracticable, we vote the republic. We shall vote it because we do not see that a monarchy is possible in Spain under present circumstances, and we prefer an honorable affirmation to a shameful negative. We are not among those who will pretend to march with your leaders. We shall be with you as soldiers in the ranks, uniting with you in the love of country and of liberty and social order. Our vote has still another aspect. Foregoing forms which, under other circumstances, we might deem indispensable, we recognize the imperious necessity of depositing the government, now abandoned, in some hands, and, therefore, we shall vote the republic; but with the understanding that your power will not extend beyond the moment when the constitutional convention that will be elected shall have met and shall have determined the form of government to be permanently founded. We radicals cannot suffer our party to appear less noble and worthy than the others, and, therefore, in acting as I have said we propose to act, we believe our course honorable, yielding, for the present, our opinions to the welfare of the country and the consolidation of its liberties.

MARTOS. "Gentlemen, all the great interests of the nation impel us to move promptly to a solution. A few hours ago we were under a monarchy; now we have an interregnum. Let us fill the void. And it is fortunate that we are here giving an example the like of which I do not recall in the history of any other nation. Without violence, without tumult, without the effusion of blood, without external pressure, a free vote will be taken, uninfluenced by a single act of force. If violence be attempted we will all rally to the defense of law and order. I know of no example in which, without public disorders, a monarchy has given way to a republic; and I say this in glory of the Spanish nation that has thus shown itself to be a people worthy of achieving and maintaining liberty. This good fortune at the same time illustrates the power and virtue of the democratic principle enshrined in our constitution; those individual rights which have taken root in our soil and which, whatever changes may occur, will still be found in the convictions and in the life of Spanish society. We are not to consider that the radical party, containing elements of various antecedents, admits the incompatibility of liberty with monarchy. What the Marquis of Sardoal has said for himself and some of his friends, he might have declared in the name of all the radical party. Yes; we who have not desired the grave event of this day—who deplore it bitterly, confiding, as we have, in the salvation of liberty with

the Savoy dynasty, which we defended and supported with all our will—we are not undergoing a sudden transformation in our opinions. Let it then be recorded, since it is best that we reach a republic solution without deceiving ourselves, that we continue to believe what we have ever believed. We have not taken the initiative in proposing the republic, however true it may be that several of my associates have signed the proposition under consideration. Why? Because it was the duty of those who have been heretofore republicans to say: ‘The moment has arrived to proclaim the republic!’ It was their right to take the initiative and declare that the situation of Spain at this moment demanded a republic. They have done so. Consider then, my radical friends, let all the partisans of monarchy bear in mind, not that which would be most acceptable to us—for who, in these circumstances, can hesitate to regard before all the interests of the country—but that which the country has a right to expect of us as a party and as a social power. Is it possible for those who have ever defended liberty to exclaim, in a supreme moment, ‘I have been wrong; I despair; I abdicate?’ Never! Even the highest in authority may resign power, but the dignity of a political party forbids that it shall renounce its responsibilities. Therefore we are here without disparagement of our consistency or of our honor, to fulfill a great obligation. I rejoice that the republican party receives us, and I rejoice in this, above all, for the sake of the country and of liberty. But, let it be understood that in contributing to your ends we have only consulted our duty. I respect all opinions, as I desire that mine may be respected. I say, without taking an initiative in the proposition under discussion, that we accept it and shall vote it. [Great applause.] The republic will be order and peace. And herein we are united—the republicans of yesterday and the monarchists up to this hour are all republicans from to-morrow, to save democracy, liberty, and all the interests of society. Before resuming my seat I must say to you, I respect the worthy conduct of our illustrious friend, Mr. Zorrilla, who, in declining to take part in the government, makes the most honorable of sacrifices. Would that he had yielded to the supplications we have all addressed to him to accept office.”

ZORRILLA. “I shall not trouble the chamber long, and I begin by saying that I do not regret having given rise to the recent incident, seeing that, contrary to my anticipations, this proposition is about to be voted, and that the wishes of the chamber may be thus fulfilled. Nor would I have troubled the chamber at all, notwithstanding the allusion made to me by Mr. Martos, had I not felt impelled to discharge an imperious duty. I did not believe this afternoon that I could or should occupy my seat on the minister’s bench after the King’s abdication was accepted. I felt I could not, I should not, and even if I had done so I could not have accepted the republic. Neither am I a monarchist; and this is my misfortune. I must, however, say here that all my sympathies are with those who are at the side of liberty. Why should I wish to deceive anybody? Why should I occupy myself to-night in conciliating others? Why? To-day I finish my political career, as once before I desired to end it, having returned to public life against my will. No, gentlemen, the crowning shame for those who made the revolution of September would be the restoration, with its blunders and its impotence.”

Mr. Esteban Collantes, interrupting the speaker, demanded the floor for a personal allusion.

Mr. ZORRILLA continued. “I am sorry that Mr. Esteban Collantes is constrained to ask the floor. But what would he have me do? Why do the representatives of the reactionary party incommode themselves, since

it is they who have placed every obstacle to the establishment of a monarchy? If I remained silent, my silence might afford nutriment to the hope of a restoration in which I have never believed, and which now more than ever seems to me impossible. What does Mr. Collantes wish? Now that I am about to retire from public life, all my days and evermore a liberal; and having always practiced liberal principles while in power, why should I not now, as I have done in other critical times, say, 'God speed liberty!' A liberty that I trust may be a reality in my country. This cannot be; and for this I neither reproach the republicans nor the conservatives. The former know what I said to them in the morning, and the latter what I said at night. I regret to have dwelt so long upon this; but I believe you will pardon me for it, as well as for the disorder in my ideas. You don't know what I have suffered in these last eight days. I shall conclude by defining my position with offense to no one, and respecting the conduct of all. I believe that he who as president of the constituent Cortes most of all influenced the establishment of the monarchy, that he who went to Italy to offer the crown to the Duke of Aosta, that he who has been minister of the King and twice president of the council of ministers, that he who has given the pledges that I have given, and who is placed in the situation in which I find myself, that he who cherishes the personal regard that I have professed for the late King—and my colleagues know it well—for they know that I have supported the dynasty and monarchy in the Tertulia club, and that I have been a liberal and a radical in the palace; he who has been thus placed and who now finds himself here, and who after all this has no faith, as I have had none for a year or more, neither in parties nor in men, could have no motive under existing circumstances to remain in public life unless he believed he could in some manner contribute to the triumph and consolidation of liberty. But I would be worthless in the realization of this dream. I retire, then, gentlemen, to private life; but I cannot do less than add a few more words, for one cannot abandon in a moment the inclinations and the feelings one has had during a lifetime. My party elected me its chief, and those of them who are here, and those who find themselves elsewhere, are at liberty to make for the port they find most agreeable. As to the situation of my country, I wish to record that the only way in which republicans and monarchists could have allied liberty and order was to have supported resolutely, each within their sphere, the dynasty of Savoy. At the same time I wish it to be recorded that neither the liberals nor the republicans have overthrown the dynasty. When it was proposed to suspend the constitution upon the allegation that anarchy menaced the country, I could not comprehend how that government could have wished these guarantees suspended, when precisely those who provoked the anarchy were the advocates of the measure. (Mr. Ulloa demanded the floor.) I do not make allusions to anybody, I conclude, I am a monarchial partisan of the dynasty of King Amadeo, of Savoy. I have been his president of the council of ministers—and I do not recognize my right to be anything else. I desire good fortune and felicity for those who are here charged with the duty of guarding liberty. All the world knows where my sympathies go, and I need not affirm them. I have done.

ESTEBAN COLLANTES. "Do not apprehend, gentlemen, that I shall have anything to say, dissenting from the noble and patriotic declaration of my worthy friends Señores Salaverria and Marquis de Bazzanallana. I would not have added a word, because we know how critical are the circumstances, and my friends agree in believing that the first as a deputy and the second as a senator have given full expression to our patriotic

convictions. I shall therefore be brief, clear, and concise, confining myself strictly to the allusion made to me. I regret at this moment to appear as an antagonist of Mr. Zorrilla, whom I esteem and with whom I desire no conflict to-day, as he has said he is about to retire from public life. All public men have obligations to fulfill; I find no reason to shrink from those imposed on me four years ago, as a true monarchist, as a supporter of a dynasty that I served in its days, but a dynasty in whose palace I did not set foot from July 17, 1854, until I saw it in exile. Thus one may say that he is a monarchist. Thus one may say that he had pledges voluntarily contracted and which he knew how to fulfill without abandoning his convictions in moments of disaster. What has happened, gentlemen? An elective monarch has abdicated the crown. Did we invite him here? Have my friends contributed to his departure? Has he abandoned the throne because we have been factious? What has been the attitude of the conservative minority; not only in this but in all the legislatures of the late dynasty? Their conduct may stand as a model for the past and for the present, and I point to it as an example for the future. Have we conspired against a monarchy that we have neither brought here nor have recognized? Nevertheless there have been conspiracies of one sort or another against this monarchy, originating in various political parties. When Don Amadeo renounced the crown, we did not oppose the proposition to pay him a tribute of courtesy and respect, because Don Amadeo had been seated on the throne of Ferdinand and Isabella. The policy that I offer to my friends, whose aptitude and intelligence enables them to see their duty better than I can point it out, is that they should know how to await their triumph. The radicals have given success to the republicans. Who knows but what the republicans may give it to us. Let us await events. Republicans, you are on the threshold of power. Promote the welfare of the country and we shall not stint you in our applause nor refuse you our sympathies if the country is happy and prosperous. But if, unfortunately, the day shall come in which you are yourselves convinced, as Don Amadeo was convinced, that the republic is impossible, let it be understood that there is a Spanish prince in whom the country sees its future, its felicity, and its welfare. I reserve for the prince Don Alfonso all my affections, my constancy, and my loyalty. Don Amadeo leaves us, we being the only ones who have never conspired against his authority, although we have never recognized it. He leaves us because he has learned that he had no other supporters than they who were monarchists and partisans of his dynasty only while he gave them power, and who turned against him the moment he changed his cabinet. Therefore he renounced the crown. Remember our conduct to-day that you may follow it to-morrow if you fail in your undertaking. We do not favor the republic. We are true monarchists, but we are no obstacle in your efforts to promote the happiness of the country, if this be compatible with your doctrines. We all find a lesson and a reproach in the events now passing. If we do not profit by them to promote the happiness of Spain, we are lost without remedy. At all events history will judge us and do justice to the rectitude of our intentions and the nobleness of our acts."

ALVAREZ BUGALLAL. "Only two words, gentlemen. Mr. Martos has said, with the frankness that distinguishes him, and with the authority that belongs to him as a member of the committee that reported the constitution, that the proposition under consideration is openly in conflict with the supreme law. The pending proposition submits to the deliberation of the two chambers united that which the chambers, whether united or separate, are notoriously and absolutely incompetent and pow-

erless to decide in conformity with the fundamental law of the state. If your first act in establishing a republic is a violation of the fundamental law, with what right, with what authority can you hope to dominate hostile factions? Following Mr. Martos you will call the legal procedure I invoke useless scruples, superstitions, and pharasaical respect for legal forms; nevertheless, these only can it sanction with my vote and presence. Ah, gentlemen, to a scrupulous regard for forms of procedure, to a blind submission to the healthful delays characteristic of strictly legal courses, old England owes the undisputed and indisputable liberty which she enjoys. To the system of public safety and of improvised institutions, to the disregard of all forms and of all legal procedure, France owes, and the Spain of our time owes, that series of fruitless revolutions and shameful dictatorships in which we have lived, and in which we continue to consign ourselves."

Mr. ULLOA. "I am sure, gentlemen, that you will have appreciated not only the sobriety and the patriotism with which those on the conservative side of the chamber have participated in this debate. Not a word of recrimination has passed our lips, although rightly we might have indulged in them. But we never could have imagined anything so foolish and insane from anybody as the spectacle we have just witnessed, of an accuser bringing charges against us, when he himself should have been in the prisoner's box, the object of just accusation. Can anybody in the world doubt, after the speeches of Mr. Zorrilla, who is the author of the tremendous crisis in which we are involved, or who it is that has destroyed the dynasty and monarchy of Savoy? [Many deputies: 'You, you! Never, never?' Noises.] I appeal to you on all sides of the chamber, whatever your politics may be, and however we may differ, and call on you to say, with your hands on your hearts, if we have not been insulted by Mr. Zorrilla. [Many deputies: 'No, no!'] No? Will Mr. Zorrilla venture to deny it? What did he mean when he said that the dynasty and the monarchy had fallen, not by the hands of republicans or of radicals, but that it was the work of the men and the party that had demanded, in grave and solemn moments for the country, the suspension of constitutional guarantees?"

ZORRILLA. "I have not said that."

ULLOA. "Mr. Zorrilla forgets himself; if not in those words, in words involving the same meaning. [Many deputies: 'Let us vote as soon as this speech is finished.'] I am all the more surprised, inasmuch as Mr. Zorrilla knows, and admitted yesterday, when he yet thought it possible to maintain the dynasty—right well he knows with what warmth, with what disinterestedness, the conservative party offered him their support. How could I have believed, gentlemen, that to-day, a day that began happily for the new era, and that is ending disastrously for the country, we should be made the target for the wrath of Mr. Zorrilla? In view of the temper of the house, and having made this protest, demanded by self-respect and the dignity and decorum of the party I represent, I resume my seat."

MANY DEPUTIES. "Vote! vote!"

ZORRILLA. "I ask the floor." [Loud murmurs.]

VICE-PRESIDENT GOMEZ. "Your excellency has the floor, and the chair begs you to be as brief as possible, in order to calm the anxiety of the chamber."

ZORRILLA. "I have only to say to Mr. Estaban Collantes that I applaud his speech as an act of courage, and to make a single remark in reply to Mr. Ulloa. I have not discussed the circumstances under which he and his friends advised the suspension of the constitution. I referred

to the general belief that we would be compelled to resort to the measure we had rejected. If his excellency desired to make a speech, he had no occasion to seek a pretext in what I said, in order to obtain the floor. I did not say that the conservative party was responsible for the fall of the dynasty of Savoy. In making a comparison, I said the fault is not with the republicans; it belongs to the monarchists. Whoever is guilty knows it. As to the offer of yesterday on the part of the friends of the honorable gentleman, it is unnecessary for me to speak of it here. There were three offers, and I do not wish to discuss them now. When the time comes to speak of each one of the three, I will then say to the country what I think proper of them."

MANY DEPUTIES. "Vote! vote!"

CASTELAR. "Two words—because the exigency and the gravity of the moment do not permit me to say more. Gentlemen, the republican party does not claim the glory that might belong to it of having destroyed the monarchy. Nor can we permit you to throw upon us the responsibility of this grave situation. No; nobody has destroyed the monarchy in Spain, nobody has killed it. In contributing to improve the opportunity before us I cannot in my conscience claim any merit in destroying the monarchy. The monarchy died by internal decomposition. The monarchy dies without any one having contributed to its death. It dies by the providence of God. With Ferdinand the Seventh fell the traditional monarchy. With the flight of Isabel the Second disappeared the parliamentary monarchy. With the renunciation of Don Amadeo of Savoy the elective monarchy falls. No one destroyed it. It died of natural causes. Nobody has brought the republic into being. It is the creation of circumstances. It comes from a conjuncture of society and nature and history. Let us salute it as the sun that rises by its own gravitation in the horizon of our country." [Great applause.]

The proposition was then read a second time. A division of the question was demanded. The secretary read the first paragraph, in the following words:

"The national assembly, assuming all powers, declares the form of government of the nation to be republican, leaving to a constitutional convention the organization of this form of government."

MR. ARDANAZ. "This is the first part—the form of government. Read the second."

The secretary read as follows:

"And an executive power shall be named directly by the assembly, removable by and responsible to this body."

VICE-PRESIDENT GOMEZ. "The house will proceed to vote on the first branch of the proposition."

CALDERON COLLANTES. "In my judgment the proposition contains three parts: first, that which declares that the Cortes assume all public powers; second, that which establishes the form of government; third, that which provides for an executive authority."

FIGUERAS. "I ask the floor to say two words to my friend Mr. Calderon Collantes. I am sure Mr. Collantes, appreciating my good faith, will accept the explanations I am about to give. If the assembly had not already taken action prejudging in fact the first proposition, the demand for the division of the motion into three parts would be admissible. But in view of the circumstance that the senate is here, and that, together with the chamber, one assembly is thereby constituted, denominating itself the National Assembly of Spain, we have virtually

assumed in this action that this body is the sole representative of the sovereignty, and that it possesses within itself supreme power."

CALDERON COLLANTES. "This is not denied, and in this sense I shall vote."

FIGUERAS. "I understand the object of Mr. Collantes. He says, and with reason, 'We find in this proposition a clause that we can approve, and for which we will vote. We find another which we cannot approve, since it is in conflict with our principles, and therefore we demand a division of the question.' Granted, the gentleman and his friends may, however, accept the proposition as it stands, because the first branch of it to which they might dissent only asserts an existing fact. If this vote had preceded the union of the two bodies, the gentleman and his friends might have desired to place themselves on record as questioning the proceeding. But in view of the declarations made, and the sense in which they are accepted by the house, it would seem that the attitude of his excellency and his associates cannot be misunderstood."

The first branch of the proposition was then adopted—258 in the affirmative, 32 in the negative.

FIGUERAS. "I ask the floor."

The PRESIDENT. "You have it."

FIGUERAS. "We have voted the first branch of the proposition declaring the form of government of the Spanish nation decreed by the representatives of the people. And, gentlemen, I think that our first act should be to announce these joyous tidings to the governor of Madrid and to the authorities of the province and the city. Let the announcement be made also by telegraph to the civil and military authorities of all the provinces of Spain, and likewise to all the governments with whom we maintain good relations. This act will be the rainbow of peace and concord for all good Spaniards. And this done, permit me, representatives of the people, in no tone of triumph nor of reproach, but because after so many years of struggle we have attained a form of government in which I believe the liberty and happiness of my country are incarnate, permit me to conclude these brief words saying only once, 'Long live the republic!'" [Loud cries, "Viva! viva! viva!" and great applause.]

The second branch of the proposition was then approved without a division.

The PRESIDENT. "It seems to me proper that the session should be suspended, for the purpose of informal consultation preparatory to voting for the organization of the executive power."

This was agreed to; and at a quarter past 9 there was a recess.

At 12 o'clock midnight the sitting was resumed, when several members asked leave to record their votes in the affirmative on the proposition establishing a republic; which was given.

The PRESIDENT. "The assembly will now proceed to vote for those who will constitute the executive power."

The ballots having been counted and compared with the list of voters, and duly canvassed, it appeared that the whole number of ballots was 256, which were cast as follows:

President, Figueras.....	244
Secretary of state, Castelar.....	245
Interior, Pi y Margall.....	243
Grace and justice, Nicolas Salmeron.....	242
Finance, José Echegaray.....	242
War, Lieutenant-General Cardova.....	239
Navy, Admiral Beranger.....	246
Public works, Manuel Becerra.....	233
Colonies, Francisco Salmeron.....	238

The remainder of the votes were scattering.

VICE-PRESIDENT GOMEZ. "Having received a majority of all the votes cast, Mr. Figueras is declared duly elected president. Messrs. Castelar, Pi y Margall, Nicolas Salmeron, Echegaray, Cordova, Beranger, Becerra, and Francisco Salmeron are declared duly elected ministers of the several departments for which they have been respectively designated. The gentlemen chosen will take the official seats assigned to them in the chamber."

The members of the government having taken their places on the ministerial bench, there was loud and long-continued applause in the chamber and in the tribunes.

MARTOS. "Hurrah for the republic! Hurrah for the integrity of the Spanish nation! Hurrah for Cuba! And I hope this greeting of the Spanish Cortes to Cuba may be sent there by telegraph!"

The chamber responded to these cheers with extraordinary enthusiasm.

The PRESIDENT OF THE EXECUTIVE POWER, (Figueras.) "Gentlemen of the Spanish Cortes: No one will expect from me a long speech. No one asks, for no one believes it necessary, that I should now put forth a programme. Our programme is in our names, our lives, our history. Nevertheless, at an early day we shall communicate to the Cortes what we propose to do. I am unfitted to address you in the state of moral and physical exhaustion in which I find myself after the anxieties of the last forty-eight hours. Weighed down by what has passed, oppressed by the immense responsibility you have placed upon me and my colleagues, I cannot speak. I know full well that in conferring upon me the great distinction I have to acknowledge at your hands, you have been moved by the consideration that my life has been devoted to the republic. The preference that I have received among my colleagues is due to the seniority of my service, unmerited though it be by anything I have done. There is, however, one to whom, if he could have been present, this honor would have justly belonged. I allude to the unforgotten Marquis of Albaida,* the veteran of Spanish republicans. We approach the requirements of our position in the integrity of our principles, with a firm purpose of adhering to them with sincerity. We shall address ourselves above all to the needs of public order, indispensable to the establishment of a republican government in Spain. The views of those of my colleagues who have heretofore belonged to the republican party respecting the forms and the manner of developing a republican government, are known to the country. Yielding to the presence of events, we reserve our opinions, leaving to the coming constitutional convention the establishment of the definitive form of the republic. And in order that this may be done with stability, and that the voice of the nation may be freely expressed, it is necessary above all that the electoral franchise may be honestly and fairly exercised. We are resolved, and all my colleagues unite with me in this declaration, that the approaching elections shall be conducted in perfect regularity and with the most ample liberty. If the result of these elections shall not be in conformity with our principles in relation to the manner in which we think the republic should be constituted, knowing, as you do, what belongs to political consistency, and speaking only in the name of those of my colleagues who have heretofore belonged to the republican party, I need scarcely say that in that event we shall pass from this bench to yonder seats we have occupied so many years. For the information of the chamber, and in honor of Spain, allow me to read a telegram just now put in my hands: 'From the in-

* See note at the end of this dispatch.

formation received by the chief of the bureau of public order in the ministry of the interior, it appears that tranquillity reigns throughout Spain, with the single exception of a momentary tumult in Seville, which was immediately pacified.' When a people accomplish so admirably a great change from a monarchy to a republic, without the effusion of blood, without disorder, and without violence, this people give the most signal proof of its aptitude for liberty and the amplest guarantees that the republic is definitively accepted as our form of government in Spain. This change, that cannot but influence the politics of Western Europe, since it is the destiny of our race always to exercise such influences even in periods of our depression—these events, gentlemen, fill my heart with joy, in which you must all equally share, because we believe that we see in them an assurance that the republic is finally established in our land. I trust, gentlemen, to your indulgence in these somewhat incoherent observations, and that you will await our acts and judge us by them, promising only that they shall have for their sincere purpose the maintenance of the republic, of liberty, of order, and of the integrity of all the territory of Spain."

The sitting terminated at half-past two in the morning.

In concluding this sketch of the proceedings of Congress on the eventful days of the King's abdication, and the proclamation of the republic, I may be permitted to point out the signal parliamentary ability shown by the republican leaders, Figueras, Pi Margall, and Castelar, in the direction they gave to the proceedings of the assembly. The abdication of the King seems to have found the monarchical elements wholly unprepared for the exigency. The republican leaders, on the other hand, as if anticipating the event, had their plans well arranged, a part assigned to each beforehand, and all contingencies provided for, so that even in regard to matters of parliamentary form, no chance was left to their opponents to resist the consummation of the work boldly undertaken, and adroitly accomplished. For this campaign the republican chiefs were fitted by an ardent faith in their cause, and by long experience in the legislature where they have ever distinguished themselves, not only for their strength in debate, but for their assiduous application to the business of Congress.

There was but one moment in these protracted sittings, which I have thus imperfectly reported, in which the serenity and calmness of a deliberative body was in the least disturbed. Mr. Zorrilla's attitude opposing action so tenaciously on the proposition of Mr. Figueras for a permanent session, and insisting upon an adjournment for the purpose of appointing a provisional government, was so in conflict with the obvious temper of the chamber, and apparently prompted by a desire to defeat the views of those who favored a republic, that it seemed at one time as if the impatience of the assembly and the hostile attitude of the multitude without might have stained the history of the event with acts of violence. But it deserves to be recorded that in this line of action Mr. Zorrilla had no followers, and he was patiently suffered to exhaust his means of resistance without disturbing the tranquillity of the occasion.

The monarchy had ceased to retain any hold upon Congress, and, I may add, upon a majority of the Spanish people. The dynasty of Amadeo had never gained the favor of the only real monarchists in this country. It cannot be denied that Don Carlos has numerous partisans in many provinces, and it may be admitted that not a few Spaniards look forward to the reign of Prince Alfonso. But the dynasty of Savoy gave offense to the supporters of the Spanish pretenders, and was especially repugnant to the liberal masses, hostile to any King, and, above all, dis-

posed to resent the affront of being ruled by an alien. The late King was, therefore, never more than an expedient sought by General Prim to conciliate the monarchical traditions of Spain, without a due appreciation of his unfitness to reconcile the advocates of a throne, and with a still greater disregard of a growing public opinion that favored republican institutions.

The constitution of 1869 was essentially democratic. The 33d article, providing for a hereditary executive, was an exotic engrafted on a native plant. Congress, with plenary legislative power, was chosen by universal suffrage. The provincial assemblies and the municipal authorities were likewise elected by the people in their respective localities. The aristocracy ceased to exist as a political element in the state. Their ancient privileges were annulled. The equality of all men before the law was formally recognized. Religious freedom was proclaimed. So that for the past four years the Spanish people had become prepared for the complete development of free institutions, the legitimate conquest of the revolution of 1868. If it were appropriate in this dispatch, I might amplify these views by reference to the constitutions of 1837, 1820, and 1812, in each of which may be observed the successive steps by which the government of Spain has gradually approached a democratic form.

The throne has never recovered from the blow it dealt itself in the surrender of Spain to Napoleon by Ferdinand the Seventh; an act which involved the countless sacrifices of the war of independence, in which the germ of Spanish liberty re-appeared. On the death of Ferdinand in 1832, seven years of civil war were necessary to decide the succession between Isabel and Don Carlos. The unhappy reign that followed was a poor compensation for all that it cost to place the young Queen on the throne. The memory of that dreadful conflict and the vicissitudes through which the country passed down to the revolution of 1868, contributed largely to swell the ranks of those who professed republican opinions. Driven from power and exiled, almost without resistance or remonstrance or regret, the fall of the Bourbons finds its only parallel in Spanish history in the suddenness and indifference with which the late dynasty disappeared.

It may be expected that I should refer to the more immediate causes said to have contributed to the abdication of the late King. Conspicuous among these is the law for the emancipation of slavery in Porto Rico. As soon as it became apparent that Mr. Zorrilla's cabinet seriously entertained the purpose of passing this measure, giving to it the support of the Crown, the project was made the pretext for the formation of a "league," in which all parties in Spain, except the republicans and the radicals, were influentially represented. Carlists, Alfonsists, conservatives, forgetful of all differences, united in this organization. It embraced Marshal Serrano, Admiral Topete, Mr. Sagasta, General Caballero de Rodas, hitherto supporters of the dynasty, besides a number of generals and cabinet ministers of Isabella. Nor was the adhesion and support of the leading Carlists in arms in the distant provinces rejected.

The league was understood to command ample pecuniary resources. It at once obtained the support of a large majority of the journals in Madrid and in the other principal towns. It established corresponding organizations throughout Spain. Failing in alternate efforts to dissuade and to intimidate the cabinet from proceeding with the emancipation project, a formal demand was addressed to the King invoking his interposition. The King declined to interfere unless he should be enabled to do so

constitutionally with the sanction of Parliament. From that moment His Majesty, abandoned by the conservative leaders who had united with General Prim in establishing the new dynasty, became the object of renewed and imbittered hostility at the hands of all the factions in Spain.

The first outbreak was seen in the streets of Madrid on the night of the 11th of December last, which was put down by the vigor and intrepidity of General Pavia. The efforts of the "league" were then directed to the disorganization and insubordination of the army. A pretext was soon found in the assignment of General Hidalgo to a command in the north. This officer, it was said, had participated in the events of June, 1866, in which a number of artillery sergeants, in one of the Madrid barracks, having gained over their companies, undertook, at the instigation of General Prim, to compel their officers to join them in a revolutionary movement. As soon as the appointment of Hidalgo was announced, the artillery corps of the army, embracing several hundred officers of all grades, was induced to protest against the assignment of that officer to any duty in which he could exercise command over any portion of their arm of the service. I venture to call this a pretext, because, subsequent to the event of 1866, General Hidalgo held commands in Cuba and in Catalonia without objection from any quarter. Nevertheless, moved as is supposed by political influences with which they sympathized, and supported in their attitude by the "league," through which a large sum of money had been raised for the maintenance of officers depending on their pay, the entire artillery corps of the army refused to serve under their commissions, tendered their resignations, and even those who were serving in front of the enemy demanded to be relieved from duty. Their resignations were accepted; sergeants were promoted to be company officers, and the superior grades filled by transfers from the engineers and infantry. The King was besought to undo these acts of the ministry, which were represented to have given profound dissatisfaction to the officers of the army.

His Majesty was told that the officers of the other corps would follow the example of the artillery, and that the army would be dissolved. Impressed with these considerations, the King seemed at one moment disposed to yield to the suggestions of those who deprecated the consequences apprehended, and it is believed that His Majesty contemplated calling conservative advisers to his councils. The ministers, anticipating trouble at the palace, adroitly submitted the matter to Congress, and having obtained the approbation of Parliament in their proceedings, presented to the King the decree for the dissolution of the artillery corps, under circumstances which left His Majesty no alternative but to sign it. On the following Saturday, as soon as the council of ministers held that day at the palace rose, the King requested the president, Mr. Zorrilla, to remain, and His Majesty then announced to the astonished minister his purpose to abdicate.

The republicans are indebted to their patience for their triumph. Resisting all inducements to precipitate action, the leaders diligently labored to spread their teaching and strengthen their organization. Meanwhile the drift of the radicals was inevitably toward the republic. And when the league of reactionary factions by their fierce onslaught welded all the liberal elements together in the memorable emancipation vote on the 21st of December, the hours of Spanish monarchy were numbered. They "fed the pinion that impelled the steel." Thus united and re-enforced the republicans form by far the most powerful party in this country, and will command a decisive majority in the Cortes Constituyentes.

The abdication of the King seems to have been heard with surprise in Rome, Paris, and London. In Washington you were not unprepared for the event. And although the King's resolution was suddenly and somewhat abruptly announced, it is obvious that public opinion in this country had foreseen not only the fall of the dynasty, but also the advent of a republican form of government. It can scarcely be doubted that a serious struggle is imminent between the reactionary and the progressive forces in this country. Although the contest may be long, bitter, and bloody, there are abundant reasons for the belief that, without foreign intervention, the victory will remain with the friends of religious and political liberty. Monarchy retains much of the strength that tradition imparts in this country to its ancient customs. The Roman Catholic Church contributes, through the influence of its clergy, a large share of the strength shown by Don Carlos, the most formidable pretender to the throne. This prince is said to be very deficient in the qualities that attract men to a royal standard. In all the civil wars that have been carried on in his name during the past four years in Spain, he has remained at a safe distance on the French side of the frontier, appearing only once on a battle-field, that of Orevieta, in May last, from whence it was reported he led the retreat on a horse of great speed. For some three months afterward the whereabouts of His Majesty were unknown, but he has recently shown himself again on the French side of the frontier.

It has not escaped notice that the pretender and his supporters derive great advantage in being allowed to use the French Pyrenees as a base of operations for their inroads into Spain. Guerrilla parties and their officers, arms, and ammunition, military supplies of all sorts, pass the frontier into the Basque provinces, Aragon, and Catalonia. It is understood that the remonstrances which have been addressed by Spain to the French authorities on this subject have thus far proved ineffectual. The limited extent of the frontier, and the facility with which the few roads leading through the passes of the Pyrenees could be guarded, would seem to afford ample opportunity for the prevention of these operations if the French authorities were disposed to stop them.

You of course have not failed to observe the coldness with which the great European powers have treated the new government of Spain. This has naturally not been without its due effect here. It is understood that communications will be exchanged between Germany, Russia, and Austria on the subject before any action is taken, and their decision will doubtless be followed by England, France, and Italy. The territorial ambition attributed to a federal republic, the critical situation of Portugal, the provisional tenure of the present executive in Spain, and a due consideration for the sensibilities of the dynasty of Savoy, will suffice to enable the leading powers of Europe to delay recognition for some time. Our prompt action has done much to disarm the prejudices incited against us by the factions allied in the league, indicating as it does the disinterested friendship and sympathy of the United States shown toward a form of government best calculated to conciliate the elements in Cuba and Porto Rico heretofore hostile to Spanish domination.

The origin and character of the Spanish Republic furnished conclusive titles to recognition and respect. It was not proclaimed in the streets. It was not the doing of a mob. It was not ushered in with tumult, and disorder, and blood. It was the work of a deliberative assembly, legitimate representatives of the people, invested with constitutional power to substitute an executive authority for that which had

ceased to exist by reason of the abdication of the King. The fall of the late dynasty was not the result of armed force. It was the voluntary act of the monarch, from which his ministers in vain endeavored to dissuade him. The Cortes heard with profound attention and perfect calmness the reasons assigned by His Majesty for his course, in the message of abdication. And with entire unanimity and decorum Congress approved of an address accepting the renunciation of the crown, written and read by Castelar, a leading republican, in which ample justice was done to the retiring monarch. After an extended debate, in which men of all sides of the chamber freely participated, monarchists and republicans alike, the sovereign Cortes, upon a formal division by yeas and nays, adopted a republican form of government, 258 representatives voting in the affirmative, and 32 in the negative. The action of this assembly, however competent and legal for the time being, is nevertheless subject as a domestic question to the revision and sanction of a future assembly chosen expressly to amend the constitution, and which by the common consent of all parties will meet at an early day. Meanwhile it is to be hoped that the same moderation and prudence which have thus far characterized the republicans will contribute to the final consolidation of free institutions in Spain.

The tendency of opinion is decidedly toward a federal republic. If the ancient lines of demarkation are followed, thirteen States may be formed, including the Balearic Islands, the Canary group, the Antilles, and the Philippine Archipelago. Apart from the hostility to centralization, growing out of the grievances it has brought in its train, there is much in the traditions, in the origin, and in the various elements comprising the Spanish nationality adapting it to a federal form of government. Catalonia, the Basque country, Galicia, and Castile, each have their peculiar idiom, as unlike as the dialects of a Scotch Highlander and a Welshman. Neither the German nor the Austrian empires embrace elements of greater dissimilarity than those found in the Spanish peninsula, not to speak of the Spanish dependencies in the Mediterranean, the Gulf of Mexico, and in the East Indies.

Andalusia, Aragon, Navarre, Valencia, and Grenada are unlike in climate, customs, manners, usages, dress, industry, and thought. In Valencia the trial by jury, established by the Moors seven hundred years ago, remains to-day as the tribunal by which those engaged in the rice culture settle all disputes growing out of the ancient system of irrigation, on which the industry of the province still depends. In the Vascongadas, from time immemorial, the people have maintained an autonomy not inferior in attributions to those enjoyed by the States of the American Union. The Spanish constitution of 1869 recognizes the federal principle in the creation of provincial assemblies, to which important functions are assigned. And, by a recent act of Congress, the maintenance of the Established Church is remanded to the respective provinces and municipalities.

It cannot escape notice that the Spanish Republic has the singular good fortune, compared with similar experiment in Europe, to be confided to the hands of statesmen of the highest personal character, and of large experience in public business. Figueras, Pi y Margall, and Castelar have been long honorably distinguished among the public men of this country. Mr. Salmeron is not less conspicuous for learning, probity, and eloquence. I might proceed with the enumeration if it were pertinent to do more than advert to the fact that in Spain, as in the beginning of our republic, the direction of affairs was happily placed at the outset in hands of capable, upright, and estimable persons enjoying and deserving the

largest measure of consideration and esteem. In this respect at least Spain may so far profit by our example as to escape the disorders that must happen to any administration, whether monarchical or democratic, if intrusted to adventurers ignorant of public affairs.

I am, &c.,

D. E. SICKLES.

NOTE TO FIGUERAS' CLOSING SPEECH.

Don José Maria Orense, Marquis de Albaida, Grandee of Spain, the Bayard of Spanish republicans. He made his first campaign fighting against the troops of the Duke de Angoulême. In 1826 he again put himself at the head of the liberals, and was driven into exile, sacrificing an immense fortune to his cause. Returning after the death of Ferdinand VII, he became the leader of the democratic party in the Cortes. In 1848 he gave the signal for a republican insurrection in Spain. Banished and afterward amnestied, he was again chosen to the Cortes, and, from a deputy, became a galley-slave, condemned by Narvaez to the hulks at Ceuta. Indignant public opinion forced his release, and he again went into exile. In 1854, failing in another republican rising, he was thrown in prison by Espartero. Liberated, and again elected to the Cortes, he was the leader of the nineteen who voted the abolition of monarchy. In 1866, the epoch of O'Donnell's *coup d'état*, he endeavored to raise the provinces in rebellion. Seized, imprisoned, and exiled for the fourth time, the revolution of 1868 enabled him to return. In May, 1869, the Cortes Constituyentes having rejected his plan of a federal republic and adopted that of an elective monarchy, Orense again took the field in the autumn at the head of numerous forces. Defeated, he expatriated himself, and now, in 1873, returns once more to find himself the hero of a republic to which he has devoted forty years of labor and sacrifices.

No. 394.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *March 6, 1873.*

By joint resolution, in the name and behalf of the American people, Congress tenders its congratulations to the people of Spain upon their recent efforts to consolidate the principles of universal liberty in a republican form of government. The President, by the request of Congress, instructs you to present this resolution to the Spanish government.

FISH.

No. 395.

General Sickles to Mr. Fish.

No. 549.]

UNITED STATES LEGATION IN SPAIN,
Madrid, March 11, 1873. (Received April 4.)

SIR: On the receipt of your instruction transmitted by cable on the 12th ultimo, I communicated its purport to the minister of state, and informed him that, being duly authorized, I was prepared, on behalf of my Government, to recognize the executive authority of the Spanish Repub-

lie. His excellency expressed great satisfaction with this intelligence, remarking that it was characteristic of a great and generous nation and of its enlightened rulers.

I then asked the minister when it would be agreeable to the President, Mr. Figueras, to receive me, in my official character, in public audience. Mr. Castelar replied that the cabinet would desire to be present, and, in order that the occasion might be marked with proper ceremony in other accessories, he preferred to confer with his colleagues before designating the day, of which, however, he would promptly notify me.

Pursuant to an intimation subsequently received, the secretary-general of the President came to the legation on Saturday, the 15th ultimo, with two state-coaches; in the first of which he accompanied me to the official residence of the executive, the other following with the secretary of this legation. I wore the uniform of my rank in the Army. Two battalions of troops in line received me with military honors at the Presidency, the band playing American national airs. A very numerous assemblage, filling the wide street, saluted me with cordiality.

Escorted to the ante-room by the aides-de-camp of the secretary of war, I was met by the Viscount del Cerro, first introducer of ambassadors, who conducted me to the reception-chamber, where I was awaited by the President and cabinet. Announced by the Viscount, I read the following address, a copy of which had been placed in the hands of the minister of state the day before.

The English version of my remarks will be found in Appendix B.

The President, Mr. Figueras, then read the reply, of which the following is a translation:

MR. MINISTER: A grave responsibility accompanies the trust confided to me by the sovereignty of the assembly, and which has been recognized by the adhesion of the nation—a responsibility sufficient of itself to overwhelm me if there were not moments of consolation and support like these, when your most eloquent words bear to my ears the mighty voice of the American people, hailing with their benediction the advent of the republic in this our own Spain, attained by her moderation and energy, and which she will preserve and maintain by consummate prudence.

As the faithful and sensitive interpreter of the sentiments that animate your race, you have reminded us of the gratitude your people feel toward our people, because the daring of our explorers discovered, the valor of our heroes conquered, and the faith of our missionaries evangelized a great portion of the vast domain lit by the shining stars of your glorious commonwealth. But even had the memory of those deeds not recurred to you and to us, who are of the stock that achieved those great conquests, and even did they not possess such a glorious character, they would acquire it to-day, because they form a bond of union between Spain, which carried to your shores the germs of civilization, and America, which now gives us by her example the fruits of liberty and of democracy.

You are grateful to our people for these immortal and historic deeds, but how much more gratitude do we not owe—we whose lives have been devoted to the hard problem of uniting democracy and liberty—to the noble Pilgrims, the founders of your institutions, who, inspired by their own serene belief, sought beyond the seas a temple for their unfettered conscience and founded in the New World a new order of society, which, organized and perfected by the republican spirit of the eighteenth century, has united in perfect equilibrium the authority of society with the inherent rights of man, the restless vigor of democracy with the firm stability of power, the free outgrowth of all the aspirations of the human soul with respect for the interests of others and for the laws—a worthy example not to be forgotten in the new era of our country.

Mr. Minister, the Spanish Republic will ever count among its greatest privileges the opportunities given to it by its character and origin to strengthen the ties of friendship between Spain and the United States. We possess in the New World a considerable and integral part of our national territory, which must ever serve, under the shadow of the Spanish flag, as a bond of relationship between the two continents. In order that our islands may fulfill this high mission, and that they may be preserved for this civilizing purpose under our own nationality, we count upon the energy of all Spaniards, upon the virtue of our new institutions, upon the fruition yet to spring from the abandonment of the errors of the past, and upon public opinion in the United States, whose influence throughout the whole American continent is so great and so justly merited.

These hopes are strengthened by the illustrious name won by the President of the United States, and by the credit and sympathy possessed among us by his representative in Madrid. If the most pleasing of all your duties has been the recognition of my authority, my most pleasing task will be to aid you in all the means by which you may contribute to promote the fraternal policy that should exist between the republic of the United States and the republic of Spain.

The Spanish text of this speech is contained in Appendix C.

I was then presented by His Excellency the President to the ministers, with each of whom felicitations were exchanged, and in turn I presented the secretary of legation, Mr. Adee.

Retiring with the same formalities observed in my reception, I paid a brief visit to the President in his private apartments.

A number of ladies and gentlemen witnessed the ceremony from the balconies and adjacent corridors.

I then proceeded, with the introducer of ambassadors, to the palace, and made the usual visit in state to the foreign office. Mr. Castelar welcomed me with great cordiality, and said that in view of the sovereign attributes of the national assembly, the president of that body, Mr. Martos, would receive me the same afternoon at the palace of the Cortes.

Accompanied by the Viscount del Cerro, I accordingly repaired thither, and was met outside at the steps of the principal entrance, formerly the royal portico, by the mace-bearers of the assembly, and the secretaries, Senators Balart and Benot. Preceded by them, I was led to the presence of the presiding officer of the Cortes. His excellency, assisted by the vice-presidents and secretaries, the minister of state, Mr. Castelar, being present, received me in the salon of the presidency.

I addressed his excellency briefly, in Spanish, expressing my satisfaction in offering, in the name of my government, its respectful and fraternal salutations to the sovereign assembly of Spain, represented in the person of his excellency. Mr. Martos replied at some length, as you will see in his report of the reception, made to the assembly, which is annexed in Appendix D.

Subsequently, on the same day, the minister of state made a communication to the assembly, announcing that the government of the United States had formally recognized the republic of Spain. His excellency read my address, and the reply of President Figueras, which were received by the assembly with marked satisfaction. A report of this incident will be found in Appendix D.

On the following day the President of the republic and the minister of state visited me officially at the legation.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

Señor Castelar to General Sickles.

MINISTRY OF STATE,
Madrid, February 12, 1873. (Rec'd Feb. 12.)

SIR: The King, Don Amadeo I, having presented his renunciation of the crown of Spain, the Cortes of the nation, elected by universal suffrage in a time of order and peace, assumed sovereign powers, and in one of the most solemn, most numerous, and most compact votations recorded in our parliamentary annals, they proclaimed the republic as the definitive form of government. The pacific attitude of the people of Madrid, the order which reigns in every part of the nation, the circumstance that the new government is born of the convictions of a monarchical majority, and with the acquiescence of the most conservative deputies, who, although making reservations with regard to their own personal opinions, declared nevertheless their determination to ac-

cept the new legality—all these circumstances prove, when viewed as a whole, that the new form of government is already the definitive political structure of our nation. To a future constitutional assembly which shall be freely chosen, and which will be the sincere expression of the opinion and will of the nation, pertains the final organization of the Spanish Republic.

Immediately upon the proclamation of the republic the two chambers united into a national assembly, named a government composed of the following representatives of the nation:

President, without portfolio, Don Estanislao Figueras; minister of grace and justice, Don Nicolas Salmeron; of war, Don Fernando Fernandez de Cardova; of the treasury, Don José Echegaray; of the navy, Don José Maria de Beranger; of the Interior, Don Francisco Pi y Margall; of public works, Don Manuel Becerra; of the colonies, Don Francisco Salmeron; and of state, the undersigned.

It is needless to state to you that the political aims of the new government will be, among others, to preserve domestic order at all costs, and to maintain and strengthen the good relations existing between Spain and all the foreign powers.

I avail myself of this occasion to tender to you, sir, the assurances of my most distinguished consideration.

EMILIO CASTELAR.

[Appendix B.—Translation.]

The recognition of the Spanish Republic by the United States, February 15, 1873. Address of General Sickles.

MR. PRESIDENT: In obedience to the command of my Government I come to salute, in your person, the republic of Spain.

If permitted to forecast something of the future, I would say that the tranquillity and dignity which have accompanied the recent transition, and the wisdom which has confided to your excellency the presidency of the executive power, are good omens of the happy destiny of the new commonwealth.

The United States of America, occupying a considerable part of the continent consecrated to civilization by the valor and faith of Spain, cannot witness without emotion and sympathy the establishment of a republic in the empire of Ferdinand and Isabella.

Taught by the uninterpreted practice of free institutions during the past century, their inestimable value in promoting the welfare of a nation, it is a source of profound satisfaction to the American people that Spain finds in our example the means by which her prosperity and power may rest on sure foundations.

Conveying to your excellency the fervent wishes of the President of the United States for the success of your administration, I perform the most agreeable duty of my mission in recognizing the authority placed in your hands by the sovereign assembly.

[Appendix D.—Translation.]

The recognition of the Spanish Republic by the Government of the United States reported to the national assembly by the minister of state in the sitting of February 15, 1873.

[From the official report in the Gaceta.]

* * * * *

THE MINISTER OF STATE, (Mr. Castelar.) I have rarely experienced more satisfaction in my life than in having to announce to this sovereign body the recognition of the Spanish Republic by that of the United States. As we find ourselves in a most unusual situation, being simply and purely the delegates of the will and purpose of this sovereign assembly, it seems to me that the most rudimentary courtesy and the simplest respect demand that I should give account thereto of this most important event and of the addresses spoken by the minister of the United States in Madrid, and by the president of the executive power in reply; and if the president of the chamber will give me leave I shall read these documents from the tribune.

THE PRESIDENT, (Mr. Martos.) The minister of state may occupy the tribune.

THE MINISTER OF STATE, (after having read the documents from the tribune.) Gentlemen, after having uttered these words the minister of the United States repeated to us the assurance of the complete adhesion of the Government of the United States and of the enthusiasm shown by that great people for our advance in greatness and for the boundless horizons that open to our hopes. This act is in truth a religious act,

and we should lift up our souls and our hearts to heaven and beseech the God of Columbus and the God of Washington to bless our work.

The PRESIDENT. After this important ceremony the minister plenipotentiary of the United States of America paid an unofficial visit to this sovereign assembly in the person of its president, and I had the satisfaction to hear from his lips an address in which he confirmed anew the sentiments of the friendship of the American Republic toward the Spanish Republic, and, although I may not here repeat all that I had the satisfaction of hearing from the lips of the minister in the private conversation that usually follows these ceremonies, the assembly may divine it from the pleasure I now feel, and without any indiscretion I may say that to-day more than ever before we may consider as dissipated those shadows and fears which patriotism may have harbored with respect to the integrity of our territory; which, if it has been assured in the past by the valor and resolution of Spaniards, is now the more assured by the love and the decision of a people among whom there might otherwise possibly have arisen an opinion unfavorable to Spain.

I am certain of being a faithful interpreter of the feeling of this sovereign assembly in declaring that it has heard with the greatest satisfaction the narration of the ceremony of which the minister of state has given an account, and also of that which I have just reported to the assembly.

* * * * *

No. 396.

Mr. Fish to General Sickles.

No. 305.]

DEPARTMENT OF STATE,
Washington, March 12, 1873.

SIR: Referring to my telegram of the 6th instant, a copy of which is herewith inclosed, I now transmit a certified copy of a joint resolution of Congress passed December 2, and approved the 3d instant, tendering, in the name and behalf of the American people, its congratulations to the people of Spain upon their recent efforts to consolidate the principles of universal liberty in a republican form of government.

The President, by request of Congress, instructs you to present the copy of the resolution to the government of Spain.

I am, &c.,

HAMILTON FISH.

[Inclosure.]

JOINT RESOLUTION tendering the congratulations of the American people to the people of Spain.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the name and behalf of the American people, the congratulations of Congress are hereby tendered to the people of Spain upon their recent efforts to consolidate the principles of universal liberty in a republican form of government.

That the President of the United States be, and hereby is, requested to transmit this resolution to the American minister at Madrid, with instructions to present it to the Spanish government.

Approved March 3, 1873.

No. 397.

General Sickles to Mr. Fish.

No. 554.]

UNITED STATES LEGATION IN SPAIN,
Madrid, March 14, 1873. (Received April 4.)

Sir: On the receipt of your cable instruction of the 6th instant I addressed a note to the minister of state, a copy of which, Appendix A,

is inclosed, communicating to the government of the republic the congratulations tendered by Congress to the people of Spain.

On the following day I received from Mr. Castelar the reply, translated in Appendix B.

The minister has since intimated to me that the government intends proposing to the national assembly a suitable answer, to be made in the name of that body. As the relations between the executive and the present assembly do not seem as cordial as might be desired, it is not improbable the government may reserve the matter for the action of the Cortes Constituyentes.

I have, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

General Sickles to Mr. Castelar.

LEGATION OF THE UNITED STATES OF AMERICA,
Madrid, March 6, 1873.

SIR: The undersigned is instructed by the President of the United States to communicate to the government of the Spanish Republic a joint resolution of the American Congress, tendering its congratulations to the people of Spain, in the name of and on behalf of the people of the United States, upon the consolidation of the principles of universal liberty in a republican form of government.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, in acquainting his excellency the minister of state with this action on the part of Congress, trusts that the government of the Spanish Republic will see in this emphatic manifestation of sympathy and fraternity a fresh proof of the amity and good will the United States have never ceased to cherish for Spain, their early friend and ally.

The undersigned avails himself of this gratifying occasion to repeat the assurances of respect and consideration he has heretofore had the honor to offer to his excellency the minister of state.

D. E. SICKLES.

[Appendix B.—Translation.]

Mr. Castelar to General Sickles.

MINISTRY OF STATE,
Madrid, March 7, 1873. (Received March 7.)

SIR: The executive power has learned with the most profound satisfaction of your note of yesterday's date, in which you are pleased to communicate to the government of the Spanish Republic, under instructions from the President of the United States, the resolution adopted by the American Congress congratulating the Spanish people in the name of the people of the United States upon the proclamation of the republic in Spain, and upon the principles of liberty inherent to this form of government.

The Spanish nation cannot but see in this act of the Congress of the United States, as solemn as it was spontaneous, a new proof of the sentiments of amity and sympathy that have ever existed between the two countries, and that the community of political institutions they both possess will tend to bring them closer together, to the mutual benefit of their interests.

The executive power, as the exponent of this sincere aspiration of the Spanish people, begs through me that the President of the American Republic will be pleased to convey this response to the houses of Congress in Washington, together with the expression of our liveliest sympathies.

I avail myself of this opportunity to repeat to you, sir, the assurances of my most distinguished consideration.

EMILIO CASTELAR.

No. 398.

Mr. Fish to General Sickles.

No. 309.]

DEPARTMENT OF STATE,
Washington, March 21, 1873.

SIR: It has become necessary again to instruct you to call the attention of the Spanish government to the onerous burdens to which the trade of the United States is subjected by reason of the system of fines imposed by the customs authorities of Cuba.

The able manner in which you have already presented the subject in your notes of the 16th July, 1870, and 28th of November, 1872, makes it unnecessary for me to repeat or to dwell upon the facts of which our ship-owners and masters complain. The printed memorandum which is inclosed shows the present condition of the question. The remedy which the ship-owners of the United States desire cannot be better stated than in the language of the following extract from the memorial which forms part of the inclosed memorandum:

The Spanish laws require that a vessel bound for Cuban ports shall make out manifests of cargo, the same to be certified by the Spanish consul residing at, or nearest to, the port of loading, in which manifest the captain must declare positively, and without qualification, the several and different kinds of packages, their marks, the generic class of contents, as well as the weights and values of same, and for every instance where, on arrival in Cuba, the examination of the cargo shows a difference between the packages and the weights, and contents of same as actually found, and the same as manifested, the vessel is fined, while the goods escape all responsibility.

That although the *generic* class of the goods is stated on the manifest, in compliance with the requirements of the Spanish laws, and said manifests accepted and certified to by the Spanish consul, yet the vessel is fined for not stating the *specific* class.

That we are entirely dependent on shippers of cargoes for information as to weights, values, and contents of packages shipped from which to make out manifests, and irresponsible parties often give erroneous descriptions of their part of cargo, resulting in fines imposed on the vessels, at times greatly in excess of the freight, against which we have no redress.

That the customs authorities at the several ports in Cuba place different constructions on the laws relative to vessels, and the manifests of same, and fines have been imposed in one port for stating that for which fines were imposed in another port for omitting.

That the captain is only informed of any fines imposed on his vessel when he attempts to clear her at the custom-house, whereby he has either to pay the fines or detain the vessel indefinitely while contesting the same.

That although we are willing and endeavor to comply with the said laws regulating manifests, yet, under the conflicting instructions placed on same by the different collectors of customs in Cuba, we find it impossible to do so, or to avoid fines.

In cases where fines are imposed, an appeal to the superior authorities at Havana is permitted on payment, under protest, of said fines; but unless the amount of such fine is excessive, the delay occasioned by the detention of the vessel would exceed in most cases the amount of such fine even if recovered.

We would respectfully represent to the department that as the vessel, through her agents, is entirely dependent on the shippers of cargo for information necessary to describe on the manifest the contents and weights of packages shipped, the propriety of imposing fines on the *goods* erroneously described on manifest, instead of on the *vessel*, as then the shipper would have a sure remedy against the vessel in case of error on her part, or on the part of her agents, in making out manifests, while under existing regulations it is in most cases almost, if not impossible, for the vessel to recover the amount of fines from the shipper.

These objections and suggestions appear to be reasonable, moderate, and just. It has therefore been determined both to instruct you to use your best endeavors to secure the modifications and changes which the ship-owners desire, and also to endeavor to secure a similar and, as far as possible, identical action on the part of the British, German, and Swedish and Norwegian governments, whose commerce also is affected by these rules and regulations.

You will therefore confer with the British, German, and Swedish and Norwegian ministers at Madrid, in the hope that they may receive instructions which may enable each to frame a note to be addressed by each separately to the Spanish minister for foreign affairs on the subject, which may be simultaneous, if not identical. Should they or either of them, under instructions from their governments, decline to act, you will nevertheless address a note yourself upon the subject, and spare no reasonable efforts to induce the Spanish government to accede to the requests you are instructed to make.

I am, &c.,

HAMILTON FISH.

[Inclosure.]

Memorandum concerning the imposition of fines in Cuba for alleged violations of the customs rules and regulations.

On the 1st day of July, in the year 1859, a royal order was issued in Madrid respecting a new tariff on the island of Cuba. It provided, in substance, that masters of vessels bound from *foreign ports* to Cuba should present to the Spanish consul a duplicate manifest, showing (1) the class, nationality, name, and tonnage (according to Spanish measurement) of their vessels; (2) the master's name; (3) the port whence bound; (4) shipper's and consignee's name; (5) the bales, hogsheads, barrels, cases, and packages, with their respective numbers and marks, specifying, in ciphers and writing, the quantity of each class; (6) the generic class of the merchandise or contents of the packages according to the bills of lading; (7) those destined to bond or in transit; (8) that the vessel carried no other merchandise. It was further ordered that articles which cannot be packed in cases or packages should be declared according to Spanish weight or measure. All articles cast overboard were to be noticed in the manifest, with a specification of the amount, the packages, and their classification. These duplicate manifests were to be certified by the consul, who was to deliver one to the master, retaining the other for transmission to Cuba. The master was required, on arrival in the Cuban port, whether arriving there from necessity or in the course of the voyage, to deliver his copy, in person, to the visiting officer, first noting on it (1) goods belonging to the crew not included in the manifest, up to the value of \$100 for each person; (2) the surplus of provisions on board; (3) munitions of war or extra supplies.

It was further provided that the same form should be gone through with in the case of the vessels sailing in ballast.

The penalties for non-performance of these requirements were fixed at: (1) for not presenting the manifest of a vessel in ballast, \$200; (2) for not obtaining the certificate of the consul, \$100; (3) for failure in specifying details in the manifest as required, \$25; (4) for failure to state the tonnage according to Spanish measurement, in addition, the cost of the measurement, should the excess be more than ten per cent.

This order was suspended soon after its promulgation in 1859, and remained in abeyance until July, 1867. It was then promulgated anew, and notice was given that instead of requiring "(6) the generic class of the merchandise, or the contents of the packages according to the bills of lading," masters would be required to state "(6) the generic classes of the merchandise, or the contents of the packages and their full weight."

With the publication of this royal order there also appeared in the Spanish, French, and English languages what purported to be identical "rules and regulations to be observed by the captains and supercargoes of Spanish and foreign vessels engaged in importing goods to the licensed ports of the island of Cuba, in conformity with the royal order of July 1, 1859, royal decree of March 1, 1867, and the rules in force according to existing custom-house regulations."

For the purposes of this memorandum it is not necessary to consider these particular rules, because on the 18th of November, 1868, they were suspended, and the following rules and regulations were substituted in their place and are now in force:

Rules and regulations to be observed by the captains and supercargoes of Spanish and foreign vessels engaged in importing goods to the licensed ports of the island of Cuba, in conformity with the royal order of July 1, 1859, royal decree of March 1, 1867, and the rules in force according to the existing custom-house regulations, which have been approved by the colonial ministry in November 11, 1868.

1. All captains and supercargoes of vessels hailing from foreign ports and engaged in the importing trade to this island are obliged, on being visited by the health-boat, which visit takes place after the vessel has come to anchor, to deliver the statement

of the cargoes, certified by the Spanish consul, and also the general manifest of the aforesaid cargo, without any corrections, containing the name of the captain and vessel, its nationality, number of Spanish tons, the port from whence she sailed, number of bales, packages, and every other article composing the cargo, with their respective marks, numbers, and the class of goods, the names of the shippers and consignees of the goods, expressing also, both in figures and writing, the quantity of every article and their kind, according to bill of lading; their weight, whether intended for bond or transit; it being absolutely prohibited to make any addition or alteration on the manifest or statement of the cargo, nor shall it contain any merchandise consigned to order; and should there be any difference between the statement of the cargo and the manifest, such offense will be punished according to regulations.

If the whole or part of the cargo is composed of iron bars or plates, metal plates, timber, jerked beef, salt, cocoa, or any article shipped in bulk, they must be manifested by decimal weight, adding at the end of each manifest the stores, ammunition, arms, tools, instruments, and all other ship's utensils, the coals, if the vessel be a steamer, and also the effects that the crew may carry on the manifest, to the value of \$100 each. When the cargo proceeds from a port where there is no consul or vice-consul, and if the residence of those agents be more than thirty kilometers distant from the place of sailing, the captain or supercargo will be exempted from presenting said cargo statement; but, notwithstanding this, all the cargo must be homogeneous, and must be entirely composed of one of the following articles, to wit: raw hides, timber, shooks, dye-woods, coal, or horns, provided that these effects are the production of the country from whence the vessel sailed, that the voyage has been direct, and that the duties are paid on the whole of said goods.

2. The captains and supercargoes of vessels entering in distress must also deliver a manifest of their cargo in the same manner as those engaged in the importing trade.

3. Captains and supercargoes of vessels entering in ballast are subject to the same rules and regulations of delivering the cargo statement certified by the Spanish consul and the manifest.

4. If the captain of a vessel has been obliged, by stress of weather, or any other unforeseen cause, to throw away any portion of the cargo overboard, he must state on his manifest the quantity of the cargo lost, specifying the number of packages, and the class and kind of goods, being also obliged to present to the custom-house his log-book, to prove that his declarations are true and correct.

5. All captains of vessels coming from Spanish ports with the register of the respective custom-house are only obliged to deliver an additional manifest of such goods as they may have taken on board after receiving said register, not included in the same, and also of all the stores and ship's utensils.

6. Should the captain or supercargo not present the statement certified by the Spanish consul, and the manifest of being in ballast, in the stated time, they will incur a fine of \$200; if said manifest is not in accordance with rule No. 1, a fine of \$25, and in that of \$100 if not certified by the Spanish consul.

7. If the captain, when requested by the superior custom-house official, does not immediately present the statement of the cargo and the manifest, or they are not made out according to the law, he will be subject to a fine of \$500, unless the vessel has entered in distress. This fact will be ascertained by a verbal process.

8. In case there are any corrections or alterations in said documents, the captains or supercargoes are liable to be tried by the competent tribunal on the charge of forgery; those arriving in ballast laying themselves liable to the same punishment as those arriving loaded.

9. The presentation and the statement of the cargo in the manifest are obligatory in all the ports, creeks, or anchorages of the island wherever the vessel may enter; and should it be in distress, custom-house officials will take a copy, and return the original to the captain, that he may present it at the port where his voyage terminates.

10. All packages and other goods omitted in the statement of the cargo or the manifest will be confiscated, and the captain fined double the value of the same, should the amount of duties to be paid on the contents not exceed \$400; but if the duties should exceed the above sum, and the goods be the property of the owner, the captain, or supercargo, or consigned to them, then, instead of a fine, the vessel, together with its freight-list or other utilities, will be confiscated.

11. When the vessel is entirely discharged, if one or more packages of the quantity manifested should be found short, no invoice having been delivered previously of the contents, it will be understood that the captain or supercargo of the vessel have committed fraud on the custom-house, and they will be fined \$200 for each missing package.

12. If the owner or consignee of any goods omitted by the captain in the manifest presents within forty-eight hours the bill of lading or account of said goods, he will not incur any penalty and the goods will be delivered to him; but the captain or supercargo will pay a fine equal to the value of the goods so omitted in the manifest.

13. Nothing whatever can be discharged without the permission of the collector and the inspection of the commander of the custom-house officers in the service. For the

mere discharging of any article irrespective of its value, or even if it should enter free of duty, the captain or supercargo will be fined \$1,000, or else the goods will be confiscated together with the boats or lighters which may transport the same, should the amount of the duties to be assessed not exceed the sum of \$200; but if they should exceed this sum the vessel will be confiscated.

14. No goods whatever, be the quantity large or small, can be transported from one vessel to another within the bay unless the necessary requisites of the custom-house have been complied with. A violation of this subjects the captains or supercargoes to the legal penalty.

15. Should a vessel discharge merchandise, be the quantity large or small, in a port not open to general commerce, said merchandise, as well as the vessel and all her appurtenances, will be confiscated.

16. If in consequence of the visit to the vessel by the custom-house officers before the captain has received his register an excess of cargo should be detected, such goods will be confiscated, and the captain will be fined in a sum equal to the value of the excess.

17. All goods, products, or any other article seized in the act of being fraudulently shipped shall likewise incur the penalty of a fine and confiscation.

18. If the captain or supercargo should be unable to pay the fines and costs imposed, the vessel will be held responsible, and seized unless the consignee assumes the fines.

19. The captain who does not declare the exact Spanish tonnage of his vessel will pay the cost of measuring, if the excess is over ten per cent.

20. Passenger luggage must be presented for inspection in the custom-house depot, and if there be found merchandise not exceeding \$100 in value the passengers will pay the usual duties, presenting a note of the contents to the custom-house. If the value of said goods is more than \$100, and less than \$200, they will pay double duty; but if the value is more, the effects are liable to seizure, unless in either case the person interested has previously presented a list of said goods, in which case they will pay according to the tariff.

21. No manifest will be translated or permits be granted for discharging, unless the captain or consignees have previously presented the register of the vessel to the custom-house.

This document in three languages, Spanish, English, and French, is given this day to captain, _____, of the vessel _____, for his information, and he signs the receipt at _____, 186-.

[Signature of the administrator of the customs.]

[Signature of the interpreter.]

[Signature of the custom-house inspector.]

The interpreter: _____.

The custom-house collector: _____.

Custom-house inspector: _____.

It may be said, in passing, that the only important difference between these rules and those issued in 1867, is in the requirements of the first rule concerning the specification of the goods. This difference is shown in the foot-note.

NOTE.

Rules of 1867.

Número de fardos ó bultos y demás efectos de que se componga su cargamento, con expresion de sus números, marcas, nombre genérico de las mercaderías segun conocimiento, y su peso bruto, &c., &c.

Rules of 1868.

Número de fardos ó bultos y demás efectos de que se componga su cargamento, con expresion de sus números, marcas, la clase genérica de las mercaderías del contenido de los bultos, y su peso bruto, &c., &c.

FRENCH.

Et le nombre de fardeaux, colis et autres effets dont se compose le chargement, avec les numéros, marques et noms des chargeurs et consignataires; manifestant également en numéros et lettres la quantité de chaque article et le nom générique des marchandises selon connaissance, et le poids brut, &c., &c.

Et le nombre de fardeaux, colis et autres effets dont se compose le chargement, avec les numéros et la classe générique des marchandises et le contenu des colis, marques et noms des chargeurs et consignataires; manifestant également en numéros et lettres la quantité de chaque article et le nom générique des marchandises selon connaissance, et le poid brut, &c., &c.

On the 16th of May, 1870, the rules of 1868 were promulgated afresh in Cuba by the intendente general de hacienda, in a circular of which the following is the principal portion :

[Translation.]

INTENDENCIA-GENERAL DE HACIENDA.

[Circular.]

"On the 11th of October, 1868, a proclamation was made by the provisional government that the masters of vessels trading with this island should comply with certain rules indispensable for the customs service, relating to manifests, and especially to the declaration of the Spanish tonnage, constituting the burden.

"Upon assuming the duties of the intendency, I observed a non-compliance with these rules, as well as with many others; and as it is my chief duty to guard and have respected the directions of the government, I ordered that these and all other dispositions in force should be rigorously executed, without favoritism, exceptions, or tolerances of any kind, since all vessels are equal before the intendency, and likewise all nations.

"When the administration of the customs began to comply with my instructions, they found themselves obliged to impose the fines which the law exacts upon the masters of many vessels who had relied upon their previous impunity, and, ignorant of my directions, neglected to comply with the laws.

"This produced a multitude of solicitations from masters seeking condonation, and also representations from the consuls and commercial agents of various countries reclamations very appreciable by the intendency, whose primary duty is to facilitate commerce, the essential base to order and public prosperity.

"The intendency pondered over the subject, and determined to relieve from the penalty the masters of all vessels which had not entered the ports of the island since the 19th day of December, 1868, at which date his excellency, the superior political governor, confirmed the aforesaid order of the provisional government of the 11th of November of the same year, and this circumstance justifying the measure, and as was settled by the circular of the 22d February of this year, published in the Gazette by the central sections of the customs.

"Doubts had arisen as to the proper method of putting the above into practice, and his excellency the superior political governor having heard in relation thereto the central office of the customs, the comptrollers of the treasury, the intendency, and the council of administration, it has pleased him to decide that this may be justified by certificates presented by the masters from any of the ports of entry of the island, certificates which the consignees of the ships must present within thirty days, counting from the day in which he is notified of the imposition of the fine, it being well understood that this penalty shall not attach to masters who protest in writing or personally against it, if sailing for the first time to these ports, provided that they give bond until the question is settled.

"The intendency already having had the honor to signify to the public the great trouble experienced, caused by finding itself in the painful position of being obliged to inflict severe penalties in order to execute the laws, and other provisions, the observance of which is committed to its jurisdiction, has given the necessary information to masters of vessels concerning customs dues. In a word, besides publishing the regulations, hereto attached, which masters must observe, and their supercargoes, has also requested the government that, through the ministry of state, it would promulgate to all our consuls, in order that they can sufficiently inform the masters of all vessels sailing for this island, to the end that the intendency may have the satisfaction not to see itself obliged to impose any penalty.

"Also measures were taken to inform foreign governments, so that on their part they may remove the ignorance of masters of vessels, and the intendency invites the attention of consignees of vessels, that on their part they may call the atten-

ENGLISH.

Number of bales, packages, and every other article composing the cargo, with their respective marks, numbers, names of the shippers and consignees of the goods, expressing also, both in figures and writing, the quantity of every article, and their kind according to bill of lading; their weight, &c., &c.

Number of bales, packages, and every other article composing the cargo, with their respective marks, numbers, and the class of the goods, the names of the shippers and consignees of the goods, expressing also, both in figures and writing, the quantity of every article, and their kind according to the bill of lading; their weight, &c., &c.

tion of their correspondents to this point, to the end that the intendency may not have to impose any fine, it being well understood that, if forced to impose it, it will exact it without partiality of any kind, for to all, whether natives or foreigners, the laws must be vindicated.

"The intendency directs the central section of the customs to adopt the necessary measures so that the administrators may publish this resolution by all means possible, to meet the interests of all concerned, which has no other end than to avoid the imposition of pecuniary fines, and finally the good services of the public press, that it will lend its aid by giving publication to this circular.

"Havana, 16th May, 1870.

"The intendent-general de hacienda,

"J. EMILIO DE SANTOS."

In their practical operation these rules worked great injustice to foreign commerce, especially the commerce of the United States, and many representations were made concerning them. The provision requiring three manifests, and that requiring the tonnage to be expressed in Spanish measurement, proved to be especially onerous.

Mr. Seward, on the 1st of July, 1868, directed the American minister at Madrid to make such representations to the minister of foreign affairs as would bring about an inquiry into and a redress of these grievances, and Mr. Hale was informed, in reply to the representations made in compliance with the instructions, that the subject should be inquired into. But the seizures went on, and the complaints continued.

On the 9th of November, 1869, for instance, the consul of the United States at Matanzas made a return showing that one hundred and fifteen American vessels had been reported to that consulate alone, as having been fined at the custom-house at that port since December, 1867. Some extracts from this report will give an idea of the trivial and venal *mistakes* (rather than *offenses*) for which these vessels were fined :

* * * * *

"These fines are in most cases imposed for trivial omissions or discrepancies in no way implicating the good faith of the masters.

"The subject has been brought to the notice of the Department at different times, and by the Department to the notice of the Spanish government. (See Diplomatic Correspondence, 1868, part 2, page 8.) But it appears to have not yet attracted the attention of the Spanish government sufficiently to bring about a modification or repeal of the regulations in force.

"As examples of the pretexts upon which these fines are imposed, I will cite a few cases of which I have the evidence before me :

"The brig Amos M. Roberts, of Belfast, Maine, was in March, 1868, fined \$25. The administrator of the custom-house, in reply to my inquiry as to the motives, states as follows : 'In the manifest which the captain of the Amos M. Roberts presented to the visiting officers on arrival, there is expressed the exact number of Spanish tons that the vessel measures, namely, 151.50 tons, but in the manifest which the captain presented to the Spanish consul at New Orleans he only declared 150.51 tons. This is the reason why he was fined fifty escudos.'

"The brig Dexter Washburne, of Portland, was fined \$100 in April of this year, because the Spanish consul at Charleston omitted to impress his seal on the vessel's manifest after verifying it. This is not, by any means, the only instance that our vessels have been subjected to fines in this port, for omissions of the Spanish consular officers.

"During the same and previous months the Henry P. Lord, George S. Berry, Ricardo Barros, Arletta, Emma M. Wright, Coquett, and others, all arriving in ballast, paid fines for alleged non-compliance with the eighth paragraph of Rule I of the Regulations of July 1, 1859, (put in force by decree of July 1, 1867,) which paragraph, up to that time, had only been applied to vessels bringing cargo, and, as far as I can learn, is only imposed in this port, even at present, on vessels coming in ballast.

"In June last, the brig Novelty, of Boston, was fined \$25 because, as the administrator informed me, 'the captain did not state in his manifest the Spanish tonnage of the vessel; and also, because he did not comply with the eighth paragraph of Rule I of the Regulations of July 1, 1859.' This vessel was constructed at Boston for the purpose of carrying molasses in tanks. It was her first voyage from the United States; and as she had never before been in a Spanish port, it could not be expected that the master should manifest her Spanish tonnage. And, as she came in ballast, the paragraph referred to was not applicable to her case.

"Several other vessels, that had never been in a Spanish port, have been fined by this custom-house for not manifesting their Spanish tonnage.

"In September last, the bark Sarah B. Hale arrived at this port, and among her cargo was a consignment of hoops. Hitherto it had never occurred to any of our custom-house officials that there could be any motive for requiring ship-masters to express the 'kind' *genero* of that article, as it is well known that there is but one kind of hoops imported from the United States, and to require them to express that the hoops are

of wood, would appear as unnecessary as to require it in any other articles of the same nature; such as sugar-box shooks, hogshead shooks, or empty casks. Nevertheless, the fine was exacted, and other vessels arriving since have also been fined for the same reason.

"I thought it my duty to bring to the notice of the administrator the case of a fine imposed on the brig Etta M. Tucker, and to remonstrate against its imposition. I accompany herewith copies of the correspondence, by which it will be seen that the matter has been referred to the superior authority at Havana.

"I earnestly request that you will bring the matter to the notice of the proper authorities, in order that some remedy may be found for these great grievances of our ship-masters.

"In very many cases the masters of vessels are not notified of the imposition of fines until the day of clearance, and then there is little time left to either the master or consignee to make necessary explanations or rectify errors.

"It results, therefore, that very frequently, to avoid detention, the captain pays the fine, however unjust it may be."

Again, on the 19th of March, 1870, the American ship-masters laid their grievances before the Government of the United States. They said:

"It is never alleged that we desire to defraud the Spanish revenue. Irregularities of the most trifling character are the sole ground which are urged to defend the imposition and continuance of our burdens. So numerous are the requirements of the custom-house, so conflicting are the interpretations of the law, so various and variable are the customs prevailing at the different ports, that we find it impossible to draw up a manifest in which an expert may not pick a flaw, or one which may not offer some pretext for the imposition of a fine of from twenty-five to five hundred dollars. Vessels which have never been in a Spanish port, and vessels which may, at the time, be on their very first voyage, are fined because they do not express their Spanish tonnage. So multifarious are the pretexts for fines that we dare not attempt to enumerate them all. We are fined for an absence of the name of the shipper of the goods and the consignee; for a failure to express numbers, weights, and measures in letters and figures; for a failure to state after the enumeration of our cargo, that we carry nothing else; for a failure to make a similar statement when we arrive in ballast; for an absence of what is known as the asseveration, or the words 'So help me God;' for neglecting to state, when we bring hoops, that they are of wood and not of metal; for the slightest error in converting American weights and measures into those of Spanish denominations; for omitting in the heading of the manifest the nationality, class, tonnage of the vessel, name of captain, place whence she comes and port whither bound; for consigning goods to order, though they may be so consigned in the bill of lading."

This document was signed by fifty-five American ship-masters in the port of Matanzas, and thirty-three American ship-masters in the port of Cuba.

On the 9th of June, 1870, the minister of ultramar at Madrid issued a decree—

"Ordering the remittance of all fines imposed in the island of Cuba for the non-presentation of a third copy of the manifest, and that under no conception whatever, and as it is found provided in the legislation for that department, can the authorities of the provinces of ultramar alter, reform, or make additions to the legislation of the customs, which power is reserved exclusively to the supreme government of the nation, the same authorities being personally responsible for whatever transgression of the law which they commit in this sense, and inserting in continuation the rules prescribed on the 1st of July, 1859, for the guidance of captains and supercargoes of Spanish vessels and those of other nations engaged in the import trade from foreign ports to those of the island of Cuba and Puerto Rico, and the modifications afterward accorded, * * * and ordering that against the resolutions that may cause lawsuits, by the intendents of the public treasury of the provinces of ultramar in the matter of customs, a contentious demand may be made, by those who consider themselves injured in their rights, before the respective territorial courts, and in conformity to that prescribed by the decrees of the 7th of February and the 6th of April, 1869."

This decree was promulgated at Madrid on the 12th of June, and in Cuba on the 6th of July.

At this stage of the proceedings the United States invoked, diplomatically, through their minister at Madrid, the interposition of the Spanish government. On the 16th of July, 1870, General Sickles, the American minister at Madrid, addressed a note to Mr. Sagasta, the minister for foreign affairs, in which, after a concise recital of the material facts hereinbefore set forth, he continued as follows:

"The revenue laws of most countries provide a system of equitable and summary relief in cases where a fine or forfeiture may have been incurred by merchants or masters of vessels without culpable negligence or intention of fraud. In the United States, for example, it is provided that in such cases an alleged offender desiring relief may present his petition to a magistrate, whose duty it is to hear the parties in a summary way, and make such recommendation to the principal officer of the Treasury as the circumstances of the case may suggest. This course of procedure has been followed

in the United States since 1797, and has been found entirely satisfactory to the persons concerned as well as to the Government.

"Without undertaking to enumerate all the unusual and severe exactions contained in the twenty-one articles of the circular of the intendente de hacienda, those mentioned as illustrations will be sufficient, I hope, to convince your excellency that these regulations should be revised, and so modified as to relieve foreign vessels trading with Cuba from burdens which cause serious inconvenience to commerce without corresponding advantage to the treasury.

"With regard to the clause requiring a foreign vessel to show its Spanish tonnage on its manifest, it must be always extremely difficult, and sometimes impossible, for masters of vessels to comply with that regulation. I am not aware that any other nation has established a similar rule. It is certain that the United States have never required Spanish vessels entering their ports to show their American tonnage on their manifests. The measurement and tonnage of all American vessels appears on the ship's register. The measurement is made and the tonnage calculated according to the standard of the country to which the vessel belongs. And this is believed to be the common practice of nations. The United States take care, as it is presumed all governments do, that the certificate of registry delivered to the master of a vessel expresses her true dimensions and capacity for burden. It is easy, then, for the proper officer of the customs in any foreign port, taking the measurement found on the vessel's papers, to compute her Spanish tonnage, for the purpose of ascertaining the amount of tonnage-dues to be collected, or for any other purpose depending upon the capacity of the vessel. And in any case in which there may be reason to doubt the correctness of the register, a new measurement may be made.

"It does not distinctly appear whether the gross weight of merchandise in bulk, which must also be stated on the manifest, is required to be given according to the Spanish standard. If that be the true interpretation of article 1 of the circular, then it imposes an additional hardship upon masters of vessels, which is believed to be equally without precedent. And if the weight of cargo in bulk is not to be stated according to the Spanish standard, but according to the standard of the country where the vessel was laden, then it is difficult to see why one rule should be applied to the statement in the manifest of the tonnage of the vessel, and another to the weight of her cargo in bulk. I am not informed whether these regulations are to be enforced in all the ports of Spain, or whether they relate only to the Spanish colonies; or whether, adhering to more convenient and reciprocal rules in the ports of the peninsula and of the other colonies, these regulations are confined to foreign vessels entering Cuban ports. If the same requirements are to be enforced in all Spanish ports, the question presented will all the more deserve the consideration of your excellency, in view of the wider range of the embarrassments and losses to which foreign vessels engaged in trade with Spain will be subjected. But if the regulations are colonial only, or, having a character yet more exceptional, are limited in their operations to Cuba, it may be fairly asked, why is it necessary for the manifest of a foreign vessel, entering a port in Cuba, to show her Spanish tonnage, when the same vessel may enter Spanish ports having her tonnage expressed on her papers in conformity with the standard of the country to which she belongs?

"Moreover, fines have been imposed upon masters of vessels for irregularities in manifests authenticated by the Spanish consul at the port of departure. It is to be presumed that if the consuls of Spain residing in the United States had known that these regulations were in existence, those officers would not have approved the sufficiency and regularity of papers which did not meet the requirements of the authorities in Cuba. When a consul has given to a document the sanction of his signature and seal of office, it is certainly unjust for the authorities of his own country not only to reject the document as insufficient, but to impose a fine upon the ship-master who presents it in good faith. If, on the other hand, the consuls have been duly notified of these regulations, and fail to assure themselves that the manifests they certify are regular in substance and in form, then the blame and the penalty should fall on the consul so offending.

"By article 6 of the circular of the intendente it is required that masters of vessels shall have their documents certified by the Spanish consul at the port from which they sail, in default of which they are fined two hundred escudos. And surely it will be admitted that when the master presents papers thus certified, they should be at least so far recognized by the customs authorities in Cuba as to exempt the innocent master or merchant from penalties incurred through the fault of the consul, or because that officer was not informed of the regulations in force in the ports of the country he represents.

"Much inconvenience has been caused to the Spanish authorities, as well as loss to masters of foreign vessels, by the failure to give reasonable and customary notice of the establishment of these regulations. It is the usual practice of nations, whenever material changes are made in their laws or regulations affecting trade carried on in foreign vessels, to give timely notice of such changes to friendly Governments with

whom they have intercourse, in order that merchants, shippers, and masters of vessels may be duly informed, by the proper authority, of their duty in the premises. I am not aware that these regulations have ever been communicated to the Government of the United States, or that any notification of them has been given by the Spanish government other than that published in the Havana by the intendente de hacienda in May last, and by him since furnished to the consuls residing there.

"Persuaded of the justice of the considerations presented in the name of my Government, which so much desires to remove every obstacle to free and advantageous intercourse between the two countries, I trust that it may be agreeable to the government of his highness, the regent, to cause the regulations prescribed in the circular of the intendente de hacienda to be revised and amended, so that they may bear less oppressively upon the masters of foreign vessels, and that the penalties imposed upon masters of American vessels for mere irregularities in matters of form, where no willful neglect or intent to defraud the revenue appears, may be revoked; and that the fines actually paid by masters of American vessels for alleged violations of the regulation requiring the Spanish tonnage to be borne on the manifests of American ships may be refunded to the parties concerned.

"I improve this occasion to renew to your excellency the assurances of my most distinguished consideration."

This note was not answered until the 4th of February, 1871, but meanwhile some important correspondence had taken place in Cuba.

On the 19th of August, 1870, the intendente at Havana issued a further circular, in explanation of his circular of the 16th of May, 1870. The following is a translation:

[Translation.]

"INTENDENCY-GENERAL OF THE HACIENDA.

"In a circular from this intendency of the 16th of May last, published in the *Gaceta* of the 18th of the same month, it was ordered that in order to release masters of vessels from fines which they had incurred on account of informalities in their manifests, or for not having presented them, together with the manifest certified by the consul, thus failing to comply with the regulations they should observe, according to an order of the provisional government of 11th of November, 1868, it was necessary for them to prove that they had been in no port of this island since the 19th of December, 1868, the date of the going into effect of the said order. It was also ordered that the justificatory proof should consist of certificates issued by the captains of the qualified ports of the island, which the consignees of the vessel should present within thirty days, counting from the date of the notice of the imposed fine; but as various petitions have been presented as to the difficulty and cost in many cases of procuring this proof, this intendency, desiring to give commerce and navigation all the facilities compatible with law and the interests of the treasury, after having heard the reports of the central section of customs and the board of finance, has decreed that custom-houses shall consider as sufficient proof for the purpose indicated a certificate of the consul of the port where the vessel enters, in which shall be stated that, according to an examination of the log or log-books presented to him for that purpose by the master, said vessel has not been in any port of the island since the 19th of December, 1868; the consuls being also at liberty to exact such data as they may consider necessary to certify with exactness upon the subject."

Notwithstanding the notice that three manifests would not be required, the authorities in Cuba continued to demand them. When complaint was made of their conduct in this respect the intendente made the following reply:

[Translation.]

"INTENDENCY-GENERAL OF THE PUBLIC TREASURY.

"Your polite communication of 24th October, in answer to that of this intendency of 21st of the same month, relative to the fine imposed by the custom-house at Manzanillo on the American brig *Queen of the South*, has been received, and in view of which I have to state that masters of vessels are obliged to deliver to the Spanish consul or vice-consul at the port of departure a 'sobordo' in duplicate, who returns one to the master, and the other is forwarded directly to this intendency.

"Upon arrival at this island the said 'sobordo,' certified by the consul, must be presented, and also a general manifest of the cargo. If you refer to the laws prescribed for the government of masters and supercargoes of vessels engaged in the import trade with this island, you will be convinced that the fine was justly imposed; but as the two words *sobordo* and *manifesto* have the same signification in English and Spanish

it happens that masters of vessels, upon clearing at foreign ports, deliver two manifests or 'sobordos' to the consul, under the belief that no other documents are required at these custom-houses; but as two are required, one certified by the consul (the duplicate of which is retained by the consul for this intendency) and a second without this requisite, an impression is created that triplicate manifests are exacted here, whereas two only are required, and for this are imposed fines upon those who neglect to present the second one, and gives rise to such reclamations as that made by the master of the *Queen of the South*.

"The decree to which you refer as published in the *Diario de la Marina*, and which was communicated to the Minister of State at Washington, ordering the return of all fines imposed for the non-presentation of a third manifest, having been dictated in a mistaken supposition, has been annulled by another under date the 21st of September, ultimo, which I now transcribe to you, and its perusal will show that the authorities of this island were acting in compliance with their duty in imposing the fines; but as they have been remitted for reasons of equity, and because the faults committed did not reveal an intention to commit fraud, as this intendency had indicated, I am pleased that this question has been thus satisfactorily settled, and I can assure you that the fine of one thousand escudos (\$500) imposed on the master of the above-referred-to vessel will be returned as soon as the collector at Manzanillo remits the certificate of entry, which is applied for this day.

"God preserve you many years.

"Havana, November 3, 1870.

"J. EMILIO DE SANTOS.

"The ACTING CONSUL-GENERAL of the *United States*."

[Translation.]

"INTENDENCY-GENERAL OF THE PUBLIC TREASURY.

"The following order was received from the ministry of ultramar, by his excellency the superior political governor, under date the 21st of September ultimo:

"YOUR EXCELLENCY: In view of the official letters of your excellency, Nos. 490, 501, 504, and 509, relative to the fines imposed by the custom-houses of that island on the British schooner *Island Belle*, and on the vessels *Belle Louisa*, *Evening Star*, *Carrie Douglas*, *Castilla*, *Carlton*, *Sarah Anne*, *Martha*, and *Queen of the South*, some of which fines had already been remitted by your excellency, and considering that all have been imposed in accordance with ruling legislation, his highness has been pleased to order that it be made known, as has been by order of this date, to the minister of state, with the view that it may be communicated to the claimants that the authorities of that island have complied, as they always do, with their duty. Moreover his highness, for reasons of equity and the fact that the faults committed do not reveal fraudulent intentions, has been pleased to order that the fines referred to be restored.'

"And I communicate the same to you for your information, informing you also that under this date the order has been given to the collector of customs at Manzanillo for the return of the certificate of the entry of \$500 fine, exacted by that custom-house of the American brig *Queen of the South*, and which has been remitted by the government of his highness.

"God preserve you many years.

"Havana, November 2, 1870.

"J. EMILIO DE SANTOS.

"The CONSUL-GENERAL of the *United States*."

On the 4th February, 1871, the minister for foreign affairs at Madrid replied thus to General Sickles's note of July 16, 1870:

[Translation.]

"MINISTRY OF STATE,

"*Madrid, February 4, 1871.*

"MY DEAR SIR: * * * * *

"Captains of foreign vessels are no longer required to declare the tonnage of their vessels in Spanish measure, it being sufficient on the first voyage for them to make such declaration in conformity with the builder's measurement, or according to the measurement of the respective nations to which they belong, being, however, obliged thereafter to show certificates of the measurement that shall have been used for the collection of tonnage-dues, as laid down in the order of 9th of July last.

"Respecting fines inflicted on captains of vessels for informalities in their manifests, or for not having presented them, in addition to the cargo list certified by the Spanish consul at the port from whence they sail, considering that in these omissions there was

no intention to defraud, the said fines have been remitted in those cases in which the vessels had entered the ports of the island of Cuba since the 19th December, 1868, that being the date when the order of the provisional government, of the 11th of November then last past, commenced to be in force.

"The evidence hitherto required to exonerate the masters of foreign merchant-vessels having been the occasion of reclamations, the administration has taken the matter into consideration, and instead of demanding certificates of the port captains, as heretofore, it is now ordained that a certificate shall be furnished from the consul at the port of arrival, showing that, according to the log-book, the vessel had not before entered a port of the island, the consuls being at liberty to ask from the captains such other facts as may appear necessary to certify with exactitude upon the matter. The fines were legally inflicted, and in remitting them the government has acted in conformity with sentiments of equity and deference. Your excellency will, therefore, understand that captains subjected to fines have the means to exempt themselves from payment if they fulfill the conditions indicated.

"Touching the request to modify the regulations in force, it will be taken into consideration by the board engaged in the compilation of the new orders and regulations for the customs of the colonies, which will endeavor to conciliate as far as possible the interests of legitimate commerce with those of the public treasury.

* * * * *

"C. MARTOS.

"The MINISTER PLENIPOTENTIARY of the United States."

The reforms and ameliorations which were apparently contemplated at the time when this note was written not having been carried out in practice in Cuba, General Sickles, on the 28th day of November, 1872, addressed the following note to the minister for foreign affairs:

"LEGATION OF THE UNITED STATES OF AMERICA,
"Madrid, November 27, 1872.

"SIR: I have the honor to bring to the notice of your excellency, in compliance with instructions from my government, some further representations respecting the penalties imposed by the customs authorities in Cuba for alleged violations of the royal order of July 1, 1859, and the several decrees and regulations subsequently issued in the execution thereof. Your excellency will, perhaps, remember the communication on this subject that I had the honor to address to the ministry of state on the 16th of July, 1870, as I recall with great pleasure the satisfactory reply thereto, received from your excellency on the 4th of February, 1871. It has, however, unfortunately happened, although without the least responsibility attaching to your excellency, that the promised relief of foreign vessels employed in the commerce with Cuba from the vexatious and exorbitant fines for unintentional errors and omissions as to matters of mere form in ships' manifests has not been fulfilled. In truth, under a recent circular of the intendente-general, dated September 18, it appears, as I regret to state, that American ship-masters are more frequently than ever subject to severe fines imposed by subordinate customs officers, following possibly the literal text of their instructions, without the least evidence of any intent to defraud the revenue or to disregard the necessary requirements of customs regulations.

"With reference to the suggestions made in my former communication respecting the modification of the royal order of 1859, the original source of nearly all these reclamations, your excellency kindly informed me in the note I had the honor to receive under date of February 4, 1871, that my representations would be referred to the junta, then engaged in compiling new ordinances for the ultramarine provinces, in order that the interests of lawful commerce might as far as possible be reconciled with those of the public treasury. It seems, however, from the recent circular of the intendente-general that no redress through the action of the junta has yet been granted.

"Your excellency was likewise good enough to assure me in the same communication that the government of His Highness the Regent, moved by the sentiments of equity and consideration that so much distinguished it, would concede the remission of certain classes of penalties incurred by reason of the over-zealous application of the royal order of 1859, and in which it was admitted that just grounds of reclamation had been shown. Your excellency will learn, I am sure, with equal surprise and regret, that the restitution thus ordered has not been made effective, although the reclamations have been presented severally in due form. The consul-general of the United States at Havana reports, for example, among numerous instances, that of the series of fines imposed on vessels of the United States since 1868, and which were condoned by the action of the minister of ultramar, communicated to me in your excellency's note of February 4, 1871, none have been refunded. Nor does it appear that, apart from the relaxation of the rule requiring the tonnage of foreign vessels to be expressed in Spanish measurement, there has been any essential amelioration of the unjust and vexatious exactions that have grown into usage since the revival of the almost obsolete order of

July 1, 1859. Indeed I may state that it is the concurrent testimony of persons engaged in foreign commerce with Cuba that it is extremely difficult for any ship-master to make out a manifest of an assorted cargo in which a pretext may not be found for a penalty predicated on some deviation from the strict requirements of the existing regulations.

"In commending to your excellency the expediency of a revision of the present customs procedure in Cuba, so that the important commerce with that island may be relieved of useless burdens, I am instructed to bring to the notice of His Majesty's government the practice of the revenue authorities of the United States in analogous cases, in the hope that in a spirit of reciprocity the same circumspection may be practiced in Cuba. Before enforcing upon any foreign vessel the penalties prescribed for irregularities or omissions in manifests, collectors of customs are required to consult the Treasury Department. This rule, which is embraced in article 4, part 3, of the revised regulations of that Department, is uniformly observed in the United States, with respect to all foreign shipping, thereby assuring greater care in the investigation of complaints, and protecting foreign ship-masters from the indiscretions of subordinate functionaries.

"It may be confidently assumed that the intendente-general of Cuba, an officer of high character, clothed with ample powers for the establishment of customs rules and regulations, is at once the proper authority as well for the imposition as for the removal of penalties. At present, fines are inflicted by inferior officials in any of the ports of the island; payment is demanded before any appeal can be made to superior authority; and experience has shown that the process of recovering a penalty once paid, no matter how clear may be the right to restitution, is an endless proceeding, usually abandoned after fruitless efforts. With more discrimination in the use of the power to impose fines, most of these reclamations might be avoided. A very large proportion of the penalties collected from American ship-masters in Cuban ports are imposed without evidence of any intent to defraud the revenue or to violate the law, and it may be safely asserted that if in such cases the intendente-general had been consulted before the infliction of the fine, by a reference of the case to his department, such instances of injustice could not have happened.

"I have, therefore, to request that His Majesty's government will take into further consideration the representations made in my note of July 16, 1870, and those now respectfully brought to its notice, to the end that restitution be made of the fines heretofore admitted to have been imposed improvidently; that the existing customs ordinances in Cuba may be reviewed by competent authority, with the same just disposition shown in the recent action of the Spanish hacienda to discriminate between mere errors of form and cases of culpable transgression; and that the power to exact penalties on foreign shipping in Cuba may be reserved to the intendente-general, in analogy to the considerate and deferential practice observed by my Government in like cases.

"I avail myself of the opportunity to repeat to your excellency the assurances of my most distinguished consideration.

"D. E. SICKLES.

"His Excellency the MINISTER OF STATE."

That there has been no real amelioration in Cuba is shown by the following extract from a dispatch from the consulate-general, dated October 30, 1872; on the contrary, the objectionable REGULATIONS of 1859 are prescribed and enforced with little alteration or modification:

"I transmit herewith three copies of what are styled the 'Regulations for the guidance of captains and supercargoes of Spanish as well as foreign vessels,' &c., &c. These 'regulations' are a recapitulation of the royal order of 1st July, 1859, put into force on the 1st July, 1867, which has so frequently been referred to in communications from this office. It seems unnecessary to call the Department's attention to the ambiguities, contradictions, and absurdities contained in this document. The so-called translation into English is quite as intelligible as the original in Spanish. Under these regulations, fines are imposed for the following offenses:

"For omitting to express class of vessel, whether ship, bark, brig, &c., \$25.

"For omitting the nationality of the vessel, it is not sufficient to state the brig ——— of Boston; the master must state the *American* brig ——— of Boston; the penalty of such omission is \$25.

"For omitting name of the vessel, \$25.

"For omitting to state the exact Spanish tonnage measurement, \$25.

"For omitting master's name, \$25.

"For omitting the port or ports from whence arriving, \$25.

"For omitting the name of the shipper or shippers, each omission, \$25.

"For omitting names of consignee or consignees, each omission, \$25.

"For omitting to state the kind of package, \$25.

"For omitting to state in writing, as well as in figures, the quality, or number of packages or pieces, \$25.

"For omitting marks and numbers, although the packages may have neither, \$25.

"For omitting to state the *generic* class of the effects manifested—such as *wooden hoops, iron nails, &c.*—\$25.

"For omitting to state the gross weight of different items, \$25; and other penalties for discrepancies in weights. If goods are to go into bond, or are in transit, and not so stated, \$25.

"For omitting to state at the foot of the manifest that the vessel brings *no other cargo*, although she may be in ballast, \$25.

"For omitting to give the weights and measurements in the decimal or French system, \$25 each omission.

"For omitting to manifest any goods that the crew may have in their possession, \$25.

"Omitting to note the surplus stores, \$25.

"Omitting to state the arms and ammunition on board, \$25.

"Omitting to state the quantity of coals on board, if the vessel is a steamer, \$25.

"Omitting to deliver the manifest the moment of the visit, \$200.

"For manifesting goods to order, whether or not so required by the bills of lading, \$25.

"If the manifests have not been authenticated by the Spanish consul, a fine of \$100 is imposed. In a case where the Spanish consul had neglected to impress his seal on the manifest, it was held by the customs officials at Matanzas that there was no authentication, and the vessel was fined accordingly.

"For omitting in the manifest any of requisites of Rule 1, (?) \$25.

"In addition to the consular manifest, called '*sobordo*,' another simple manifest, not authenticated, is required; this requisite is not clearly provided for in the royal order and only inferred from the second paragraph of Rule 7; nevertheless a failure to produce it subjects the master to a penalty of \$500. Numbers of our vessels have been subjected to these exorbitant fines. Any erasure, alteration, or interlineation, subjects the master to a charge of forgery.

"I know of no instances where this penalty has been enforced. A fine of \$25 is usually imposed for each defect.

"The presentation of the consular manifest is obligatory in all the ports of the island at which the vessel may touch, for orders or in distress.

"Rule 12 provides that the master who does not declare the exact Spanish tonnage, shall pay the expense of admeasurement, should there result an excess of 10 per cent. The rule is inconsistent with the first paragraph of Rule 1.

"All goods omitted in the manifests are confiscated, and a penalty of double duties imposed on the master, and if the duties should exceed \$400, the vessel, freight-money, &c., will be confiscated.

"For every package missing, upon the discharge of a vessel, a fine of \$200 is imposed.

"For discharging goods without permits, a fine of \$1,000 is imposed.

"Articles 16, 23, and 26 provide for penalties which are not clearly defined.

"Vessels coming from a port where there is no Spanish consular officer are required to have their manifests verified by three merchants, who will also certify that no such officer resides at the place, or within a radius of thirty kilometers; if omitted, a penalty of \$100 is imposed. There is no provision for this penalty in the regulations, but the fine is frequently imposed notwithstanding.

"The mail-steamer *Crescent City*, of and from New York, arrived here on the 15th instant, the day upon which the circular of the intendente, referred to in my No. 123, went into effect. Her manifest comprises fifty-eight items, and a fine of \$25 has been imposed for each, and one of \$500 for want of the consular authentication, which, hitherto, has not been required of mail-steamers. * * *

"I availed myself of the opportunity to urge upon the intendente the suspension of the royal order of July 1, 1859, in view of the gross injustice it inflicts upon foreign commerce, while experience has shown the impossibility of ship-masters making out their manifests in accordance with its provisions, and not incur some one of its numerous penalties. I acquainted him with the instructions of the Treasury Department of the United States relative to fines upon foreign vessels for want of manifests; that such fines were not enforced without consulting the Department, and I asked that the same considerations be extended to our vessels, in the out-ports of the island, where it had been customary to impose fines and exact their payment before appeal could be made to the central authority.

"I also called his attention to the fines imposed on our vessels at Manzanillo, in 1868, which General Lersundi had ordered to be restored more than four years ago, and which had never been carried out by the proper department of the intendency. He took note of my suggestions and promised that they should have due attention.

"It is due to this officer to state that upon his arrival here he found the greatest demoralization in his department, and that he is endeavoring faithfully to effect reforms therein. He makes, however, the usual mistake of his predecessors in supposing that any of these irregularities are to be attributed to the masters of foreign vessels. * *

"Regulations established on the 1st of July, 1859, for the guidance of captains and supercargoes of Spanish as well as foreign vessels engaged in the import trade between foreign ports and the islands of Cuba and Porto Rico, together with the alterations subsequently granted.

"I. Captains of vessels trading between foreign ports and the islands of Cuba and Porto Rico will deliver to the consul or vice-consul of Spain a duplicate manifest, without any corrections whatever, specifying—

"1. The rig, flag, name of the vessel, and the exact Spanish measurement. The measurement of her national register will only be exacted of vessels coming to the said islands for the first time, although the tonnage be not in accordance with the Spanish measurement; but in all subsequent voyages a certificate of the Spanish measurement made by order of the custom-house authorities will be required for the payment of the tonnage dues.

"2. The name of the captain or mate.

"3. The port or ports of sailing.

"4. The names of the shippers and owners or consignees of the cargo.

"5. The bundles, bales, barrels, boxes, and other packages, with their respective marks and numbers, expressing both in writing and by figures the quantity of every description.

"6. The nature of the contents of the packages and their gross weight.

"7. The above is also applicable to goods to be entered in bond or in transit.

"8. And finally that the vessel brings no further cargo.

"II. Should a portion of the entire cargo consist of iron, bars or plates, metal plates, lumber, jerked beef, salt, cocoa, and other merchandise in bulk, the specifications will be made according to metrical weights and measures in the duplicate manifest above mentioned.

"III. The manifests will have to be certified by the Spanish consul or vice-consul, who will give one of the copies to the captain, retaining the other one, which he will forward to the intendente-general of whatever port the vessel is bound to, to serve as a voucher to the custom-house, on a comparison of the cargo.

"IV. The captain on conclusion of his voyage will note in a copy of the manifest, which he will retain, the following additions:

"1. The goods that the crew may bring, apart from the manifest, not exceeding \$100 for each individual.

"2. The provisions remaining from the vessel's stores.

"3. War materials, ship's utensils, and also the quantity of coals she brings for use, if a steamer.

"V. The captain on arrival at port of destination, in the act of the visit by the board of health boat, will deliver to the chief custom-house officer the manifest certified by the consul, together with the general manifest of cargo.

"VI. Should the vessel leave in ballast, the captain will present to the consul or vice-consul a duplicate note to that effect in the same manner as with a manifest, viz, the consul will certify both documents, a copy of which he will give to the captain, and reserve the other to forward to the intendente of the port of destination.

"VII. Should the captain or supercargo, in anchoring in the port of destination, not present, on being visited, the manifest or note to the effect that the vessel comes in ballast, he will be subject to a fine of \$200 for the want of said document. Should the consular certification not appear in the same he will have to pay the fine of \$100 for this informality; and finally, should the requisites stated in rule No. 1 not be complied with, a fine of twenty-five dollars will be imposed. In like manner the captain or supercargo who, on request of the chief custom-house officer or whoever represents him, does not present, on being visited, the manifest and statement of the cargo, will incur a fine of \$500 unless the vessel has been compelled to put in in distress, which fact will be proved by inquiry.

"VIII. In case that any alteration should be observed in the above documents, the captains or supercargoes will be liable to be tried by a competent tribunal on the charge of forgery, whether the vessel came in ballast or with cargo.

"IX. The presentation of the manifests is obligatory, in all ports, inlets, or anchorages of the island the vessel may put into, even when in distress, the custom-house officers retaining a copy and returning the original to the captain, so that he may present it at the port of destination.

"X. The manifest may be exacted from the captain or supercargo by the revenue-cutters within distance of twenty-three kilometers from the port of destination.

"XI. All captains are obliged to present to the Spanish consul, or vice-consul, a memorandum of the approximated value of the cargo to serve as data for the commercial statistics which are under the charge of said functionary.

"XII. The captain who does not declare the exact Spanish measurement of his vessel will pay the expenses incurred in measuring, should the expense be more than ten per cent.

"XIII. A captain who, by stress of weather, or any other casualties, may be compelled to throw overboard any portion of the cargo, will make a note to that effect

in the manifest, specifying, although it be in a general manner, the number, kind, and nature of the packages. He will also be obliged to make to the custom-house a declaration thereof, and present his log-book as a proof in confirmation of his assertions.

"XIV. The baggage of passengers will undergo an examination in the customs warehouse, and in the event of any merchantable goods being found therein to the value of \$100 they will be subjected to the duties as per tariff, on presentation of a detailed statement, which must be delivered to the collector of the custom-house by the interested parties. Should the value of the said goods be more than \$100, and yet not exceed \$200, they will incur double duty; moreover, should their value be in excess of the latter amount they will undergo confiscation, unless in either of the above instances the statement of the goods should have been previously presented; in which case the duties will only be exacted as per tariff.

"XV. It is positively prohibited to make any addition or alteration in the manifest, or statement of the cargo, or the items, 'to order,' under the penalty imposed by the statutes for any difference arising between the said documents.

"XVI. This formality in the manifest will not be exacted from captains or supercargoes of vessels proceeding from a place where there is no Spanish consul or vice-consul, or where their residence exceeds a distance of thirty kilometers from the port of sailing; but in order to be entitled to this exemption the cargo must consist of the following: hides, lumber, staves, logwood, coals, or horns; provided the articles be products of the country from whence the vessel sails, and that the voyage be direct, and the duty be paid upon the total amount of the goods.

"XVII. All packages omitted from the manifest will be liable to confiscation, and, besides, involve the captain in a fine of double their value, provided the amount of the duties on the goods they contain be not in excess of \$400. Should it exceed that sum, and the goods belong or be consigned to the owner, captain, or supercargo of the vessel, the fine will not be imposed, but the vessel, together with the freight earned and every other available property, will be confiscated.

"XVIII. On the final discharge of the cargo, if one or more packages should be found missing from the manifest, without previous presentation of the invoice, the captain or supercargo will be looked upon as defrauders of the revenue, and a fine of \$200 will be imposed for each of the packages missing.

"XIX. If the owners or consignees of articles not manifested by the captain present to the authorities within forty-eight hours the invoice of the articles, they will not be involved in any responsibility, and their goods will be delivered to them; but the captain or supercargo in such a case will be subjected to a fine equal to the total value of the goods not manifested.

"XX. Without the permission of the collector, and an examination of the chief custom-house officer, nothing will be allowed to be discharged. For the mere act of discharging any goods, even if they be of no value or free of duty, the captain or supercargo will be subjected to a fine of \$1,000, and the goods taken in this manner forfeited; also the boat or lighter which conveys them; provided the said goods do not exceed \$200 in value; but should the value exceed this sum, the fine will be removed and the vessel confiscated.

"XXI. Nor will it either be permitted to transport in the bay goods in any quantity, however small, without the requisites prescribed; otherwise the captains or supercargoes will incur the established penalties.

"XXII. Should goods in whatever quantity be discharged in a port not open to general commerce, the vessel that brings them will be confiscated, together with all her appurtenances.

"XXIII. If on the clearance-visit made on board all vessels, previous to the delivery of the papers, an excess should be discovered in the cargo, said excess will be forfeited, and, besides, a fine equal to its value imposed on the captain.

"XXIV. The confiscation and fine above referred to apply to all goods seized under attempt of fraudulent shipment.

"XXV. In the event of the captain or supercargoes not being in a position to pay the amount of their fines, these, together with expenses incurred, will be borne by the vessel under their command, unless the consignees voluntarily assume the said fines.

"XXVI. No manifest will be translated nor permits granted for discharging, unless the captains or consignees have previously presented the register of the vessel to the custom-house.

"This document, in three languages, viz, Spanish, French, and English, is given this day to Captain ———, of the vessel ———, for his information, and who will sign a receipt for it.

"The Interpreter :

"The Custom-House Collector :

"Custom-House Inspector :

_____."

It is also shown by the following extract from the dispatch from the consul-general at Havana, dated January 13, 1873, that there had been no real abatement of the causes of grievance as late as that date :

* * * * *

"This matter of fines is giving a great deal of trouble to the American shipping arriving in the island. The intendente has adopted the rule that the captains shall know and manifest *every article, and the weight* of the same, that he brings, and for every error or mistake they impose a fine of twenty-five dollars. If the bill of lading from which the captain makes his manifest is not correct he would have (in order to comply with the rule here) to open every package and weigh the same. I told the intendente that he should not expect to make foreign ship-masters detectives for his custom-house, but that he should hold the goods and make the consignees responsible for any false entries in the custom-house. He says that would be better, but their law or orders puts the fine on the vessel.

"Another annoyance is that a vessel may arrive here with a cargo, and be in port a month, reload, and when the captain goes to the custom-house to clear for sea, he may be told there is a fine on his vessel on account of some informality about his inward cargo. In many cases of this kind the fine (although manifestly unjust) has been paid rather than delay going to sea, and knowing the time it takes to settle such things with the officials. A case in point I had recently. The American ship Marcia C. Day, of New York, arrived here from Cardiff on the 21st of November, with a cargo of coal; the captain's manifest called for so many tons, and that amount was entered by the consignees at the custom-house; the cargo discharged agreed with the captain's manifest. When the vessel was ready to go to sea, about the 4th of January, 1873, the parties were informed that there was a heavy fine on the vessel because the Spanish consul's certified manifest from Cardiff was one million kilograms less than the number of tons called for by the captain's, and entered at the custom-house. The consignee informs me that he was told at the custom-house that the fine would be about \$8,000. I at once addressed a note to the intendente, with a memorial of the consignee, which was never answered. After waiting six or seven days the captain determined to discharge his crew and abandon his vessel. I informed the intendente of his determination in a personal interview. He asked me not to do that, and I told him such would be the case if some decision was not promptly given in the case. The next day the vessel was allowed to go to sea without the fine being exacted.

"There is a case pending now at Sagua la Grande of the American brig G. de Zaldo, which has been fined one hundred and forty-nine times, at \$25 each, for mistakes in manifest. One item on the manifest, 100 kegs of lard, they say should be tierces, and they impose one hundred fines of \$25 each. Another item of 235 barrels of potatoes, 35 turned out to be beans, and they place thirty-five fines of \$25 each, &c., &c.

"On the 18th of January, orders were issued in Madrid that no fine should be imposed on captains or supercargoes without the approval of the intendente; but no information of the promulgation of these orders in Cuba has yet been received. The ship-owners in the United States engaged in the trade with the island of Cuba have, however, addressed a united memorial to the Secretary of State on this subject in the following language :

"To the Hon. HAMILTON FISH,
Secretary of State, Washington, D. C. :

"SIR: We, the undersigned, citizens of the United States, and owners and agents of vessels trading between this port and the several ports of the island of Cuba, would respectfully state that the practice of imposing fines on vessels arriving in Cuban ports by the Spanish customs authorities thereof, for so-called errors in manifesting cargo, has become so onerous and burdensome that we feel constrained to solicit the interference of your Department in our behalf.

"The Spanish laws require that a vessel bound for Cuban ports shall make out manifests of cargo, the same to be certified by the Spanish consul residing at, or nearest to the port of loading, in which manifest the captain must declare positively and without qualification the several and different kinds of packages, their marks, the generic class of contents, as well as the weights and values of same, and for every instance where, on arrival in Cuba, the examination of the cargo shows a difference between the packages and the weights, and contents of same as actually found, and the same as manifested, the vessel is fined, while the goods escape all responsibility.

"That although the generic class of the goods is stated on the manifest, in compliance with the requirements of the Spanish laws, and said manifests accepted and certified to by the Spanish consul, yet the vessel is fined for not stating the specific class.

"That we are entirely dependent on shippers of cargo for information as to weights, values, and contents of packages shipped, from which to make out manifests, and irresponsible parties often give erroneous description of their part of cargo, resulting in fines imposed on the vessels, at times greatly in excess of the freight, against which we have no redress.

“That the custom authorities at the several ports in Cuba place different constructions on the laws relative to vessels, and the manifests of same, and fines have been imposed in one port for stating that for which the fines were imposed in another port for omitting.

“That the captain is only informed of any fines imposed on his vessel when he attempts to clear her at the custom-house, whereby he has either to pay the fines or detain the vessel indefinitely while contesting the same.

“That although we are willing and endeavor to comply with the said laws regulating manifests, yet, under the conflicting constructions placed on same by the different collectors of customs in Cuba, we find it impossible to do so, or to avoid fines.

“In cases where fines are imposed, an appeal to the superior authorities at Havana is permitted on payment, under protest, of said fines, but unless the amount of such fine is excessive, the delay occasioned by the detention of the vessel would exceed in most cases the amount of such fine even if recovered.

“We would respectfully represent to the Department that as the vessel, through her agents, is entirely dependent on the shippers of cargo for information necessary to describe on the manifest the contents and weights of packages shipped, the propriety of imposing fines on the goods erroneously described on manifest, instead of on the vessel, as then the shipper would have a sure remedy against the vessel in case of error on her part, or on the part of her agents, in making out manifests, while under existing regulations it is in most cases almost, if not impossible, for the vessel to recover the amount of fines from the shipper.

“Therefore your memorialists pray that the Department will take such action in the matter as may seem most advisable to obtain such relief in the premises as they may be equitably entitled to.

“NEW YORK, *January 13, 1873.*

“Waydell & Co., Walch, Field & Way, Abiel Abbott, James Henry, Simpson, Clapp & Co., J. O. Ward, R. P. Buck & Co., Henry Moss, Borland, Dearborn & Co., John Chrystal, Carver & Barnes, Atlantic Mail Steamship Company, Charles Cooper, Evans, Ball & Co., Snow & Richardson, H. D. & I. W. Brockman, A. W. Dimock, president, Oliver Bryan, Thompson & Hunter, E. Sanches y Dolz, Samuel Duncan, Brett, Son & Co., Warren Ray, Lunt Dras Brothers, R. H. Griffith, Snow & Burgess, H. W. Loud & Co., B. J. Wenberg, Jonas Smith & Co., B. T. Thurlow & Son, L. C. Wenberg, E. D. Hurlburt & Co., John Swan, F. Alexandre & Sons, Van Brunt & Brother, James E. Ward & Co., Boyd Hincken, I. B. Phillips & Sons, J. H. Winchester & Co., S. C. Loud & Co., C. H. Trumbull, Miller & Houghton, T. M. Mayhew & Co., Hand & Swan, James W. Elwell & Co.

“BOSTON, *January 28, 1873.*

“Bridge, Lord & Co., Baker & Humphrey, J. Baker & Co., Aug't B. Perry & Co., Davis & Coker, Fitz Brothers & Co., Gilmore, Kingsbury & Co., Pitcher, Flitner & Co., J. R. Coombs, John S. Emery & Co., Enoch Benner & Co., John Rich & Co., Kilham, Londt & Co., Alfred Blanchard & Co., Ambrose White, Cutter, McLean & Co., Mayo & Tyler, Love Joy, John Walter & Co., Peters & Chase, J. W. Linnell, Doane & Crowell, Fowle & Carroll, Franklin Curtis, Gammans & Co., William Haskins & Son, Edw. D. Peters & Co., Hinckley Brothers & Co., William McGilvery, Joseph Wilkerson & Co., Pendleton & Rose, Isaac Coombs, Thayer & Lincoln, Henry F. Lawrence.”

It has also been suggested, in a letter, of which the following is a copy, that some relief can be afforded by the intendente in Cuba by giving such instructions to the various collectors as may insure a uniform administration of the existing regulations:

“NEW YORK, *March 20, 1873.*

“SIR: We would respectfully call the attention of your Department to the fact that American vessels trading to ports in the island of Cuba are subjected to many fines, in consequence of the various constructions placed upon the customs regulations by the respective collectors of customs thereat, and would solicit such action on the part of your Department as may be necessary to secure, through the intendente at Havana, a uniform construction of these regulations at the several ports.

“Manifests made out in what we believe to be compliance with the customs regulations of the island are accepted in one port as correct, while in another port the vessel is fined, on a similar manifest, because that particular collector places a different construction on the regulations.

“This system of exacting fines has become so burdensome upon us, as owners of American vessels, that we feel constrained to submit the matter to your consideration, and to solicit your interference in our behalf.

“We are, very respectfully, yours,

“WAYDELL & CO.

Hon. HAMILTON FISH,
Secretary of State, Washington, D. C.”

Since the foregoing was printed a dispatch has been received from General Sickles, inclosing a copy of new regulations, published December 29, 1872. The differences between these regulations and those of July 1, 1859, are as follows:

1st. To the sixth subdivision of regulation I, (page 14,) the following is added: "The words *merchandise, victuals, provisions*, or others of like vagueness, will not be allowed to determine the specific kind of merchandise."

2d. Regulation VII (page 15) is modified so that the total of the fines for non-compliance with the requisites of regulation I shall not exceed \$200.

3d. Three new regulations are added, under which regular mail steamers may carry ten tons of cargo without a consular certificate, but must have a manifest. If the cargo exceeds ten tons, such certificate is obligatory, but the captain or supercargo may declare up to six tons in addition without the certificate. If that figure is exceeded, the manifest will be held not to have been presented, and the regulations will be enforced. Fishing vessels, laden with fish or in ballast, need no consular certificate.

These modifications do not remove the features of the regulations which are now complained of, nor make less necessary the requests which General Sickles has been instructed to submit to the Spanish government.

APPENDIX.

1.—*Note from the minister of Sweden and Norway at Washington to Mr. Fish, May 31, 1872.*

LEGATION OF SWEDEN AND NORWAY,
Washington, May 31, 1872.

MR. SECRETARY OF STATE: In obedience to the orders of my government, and referring to the conversation which I had the honor to have with you yesterday on this subject, I take the liberty of requesting the co-operation of the American Government in a measure to be taken jointly near the Spanish government by the other maritime powers, for the purpose of causing the Spanish custom-house regulations of July 15, 1870, to be so modified that the formalities may be simplified, which foreign captains arriving in Spain are obliged to observe, the formalities being at present a source of incessant annoyance, useless expenditures, and heavy fines. In order to attain this object the government of the King proposes that (as was done on the 13th of December last, at the suggestion of the British government, in relation to the quarantine laws of Spain) the representatives of the different maritime powers at Madrid be authorized to address to the Spanish government, after having come to an understanding with each other in the matter, simultaneous notes, requesting a revision of the customs regulations of 1870.

The King's minister of Spain having already received the necessary instructions on this subject, and the suggestion of my government having been favorably received by the representatives of the other maritime powers at Madrid, I flatter myself that the American Government also will be pleased to join its efforts to ours in order to attain the desired end, and that it will give suitable instructions to its representative in Spain.

In the expectation of a favorable reply, I avail myself of this occasion to renew to you, Mr. Secretary of State, the assurances of my highest consideration.

O. STENERSEN.

MR. HAMILTON FISH,
Secretary of State, &c., &c., &c.

2.—*Memorandum handed to Mr. Fish by the British minister at Washington, June 6, 1872.*

The attention of Her Majesty's government has been of late repeatedly called to the fines which are enforced in Spanish ports for omission to comply with customs regulations. These fines are enforced for accidental omissions in ships' manifests, as well as for non-compliance with customs regulations, and they have been levied even in cases where vessels put into Spanish ports in distress or had lost part of their cargo through marine casualties; no regard being paid to circumstances under which ships' papers could not possibly be in exact conformity with the requirements of Spanish laws and regulations. Part of the evils complained of may probably be traced to the practice of these fines being, as is stated, shared between the customs authorities and the Spanish treasury.

It is obvious that the result of such a system must be to restrict commercial intercourse with a country which adopts it. Nevertheless it is a general rule that customs regulations in themselves are not matters for discussion between governments beyond a frank statement of facts and reasons. But, in the present instance, there appears to

be grounds for an exception to this general rule. The Spanish customs regulations have not only been applied with harshness, but in the case of some of the British ships, and doubtless of some of the ships of other nations, which have been thus fined, these regulations have been enforced in a manner which is at variance with international comity. It is, therefore, to be feared that discussions are likely to ensue, the tendency of which cannot fail to be to disturb the friendly relations between Spain and foreign powers.

Her Majesty's government believe that the representatives of some other powers at Madrid are fully sensible of this unsatisfactory state of things. And it is possible that they may have reported cases of the enforcement of fines which have occurred to the ships of various powers. Numerous cases have already occurred to British shipping.

In one instance, owing to the accidental omission in the ship's manifest of twelve barrels of olive oil shipped at an Italian port for an English port, a fine of nearly £500, or ten times the duty payable on olive oil, was enforced on the vessel touching at a Spanish port for some more cargo. The utmost concession obtained from the Spanish government was a remission of half the fine.

In another instance a fine of over 2,000 pesetas was inflicted on account of the weight of cargo being in Ibralian instead of Spanish kilograms, and a further fine of over 12,000 pesetas was levied in consequence of the steamer having discharged in excess of the weight stated in the bill of lading. In spite of various representations to the Spanish government, no remission of these fines has been obtained.

In a third instance, the vessel was compelled by stress of weather and want of coal to enter a Spanish port, where the custom-house authorities seized some small articles belonging to the officers and crew and fined the ship, in the sum of about £90, on account of the above articles not being in the ship's manifest, and the Spanish government justified the action of the customs authorities on the ground that this vessel was in the transit trades. These proceedings are held to be contrary to the comity of nations.

In a fourth instance a fine of \$1,450 was imposed for the accidental omission from the manifest of one item of the cargo, and this liable only to a low duty. A remission of half the fine only was obtained.

In a fifth instance the steamer was fined 1,500 pesetas for not having the manifest presented and certified at the neighboring port to a quarantine station where it had been detained, although the captain proceeded on his voyage without so doing with the full authority of the civil governor. Moreover, the British vice-consul was held responsible for these fines, and ordered to deposit 1,000 pesetas within twenty-four hours. The Spanish government maintained their position in the affair, but their definitive decision has not yet been received.

In a sixth instance a ship has been declared liable to a fine of about \$850 on account of the captain turning English tons into kilograms, at the mistaken rate of two pounds to the kilogram!

In a seventh instance a fine of over 12,000 reals was imposed on account of a ship carrying extra anchors and chains not in the manifest, but required by English law!

In an eighth instance a fine of about £1,134 was inflicted because by a clerical error the Spanish consul in England had stated the number of some barrels at two thousand, whereas the true number of two hundred was accurately stated in the manifest!

The foregoing are instances out of many cases, and are referred to as illustrative of the manner in which these fines are levied by the Spanish custom-house authorities.

No. 399.

General Sickles to Mr. Fish.

No. 560.]

UNITED STATES LEGATION IN SPAIN,
Madrid, March 27, 1873. (Received April 16.)

SIR: I have the honor to forward herewith an official copy of the act for the immediate emancipation of slavery in Porto Rico, passed on the 22d instant by a unanimous vote of the National Assembly. It seldom happens that one has the privilege of recording with so much satisfaction the end of a long and stubborn contest, in which avarice, prejudice, and pride had to be subdued.

Singularly enough, this bill, brought in before the abdication of the King, and which in its preliminary stages had twice commanded a de-

cisive majority in a monarchical Congress, was in serious danger of defeat after the proclamation of the republic. The explanation of a circumstance so anomalous is to be sought, not in the indifference or hostility of the republicans, but in the conflicts between the assembly and the executive which immediately followed the inauguration of the new form of government.

I have heretofore pointed out the remarkable prominence given to the affairs of Cuba and Porto Rico in the deliberations of the Congress of 1872-'73. If, as I believe, the emancipation act now passed was conspicuous among the immediate causes which led to the abdication of the King, it likewise had the good fortune to be made the occasion of a reconciliation among the hostile elements in the National Assembly, which enabled that body to terminate its labors in harmony with the executive power and with public opinion.

After the defeat of the amendment proposed by Mr. Garcia Ruiz, which was an attempt to substitute for the original bill a scheme of gradual emancipation, the opposition abandoned all hope of defeating the measure by legitimate means. It was then determined to leave the assembly without a quorum when the final vote should be taken. Although it appeared that the number of deputies willing to record themselves against the bill was comparatively small, there was reason to apprehend that enough might be disposed to absent themselves from the chamber to defeat its passage, for the want of the requisite attendance under the rules. I have annexed a report of the speech of Mr. Garcia Ruiz. I cannot convey to you in any other manner so just a notion of the spirit and degree of hostility shown toward the United States by the speakers on the slavery side of the chamber. This gentleman is the sole representative in Congress of a republican sect known as unitarians. He was the only man in Spain of liberal opinions who entered the "League." His speech, denounced by the liberal party and praised by the reactionists, added no vote besides his own in favor of the prolongation of slavery.

The fate of the measure had been the subject of several conversations between Mr. Castelar and myself, in the last of which the minister expressed grave doubts of its passage, and even suggested that I should advise you in advance of its probable failure, assuring you, however, of the prompt and decisive action of the Cortes Constituyentes on the whole subject of colonial reform in June next. Declining the unwelcome task of repeating explanations of past failures and promises of future action, I urged his excellency to insist on a decisive vote, in which the government and its supporters at least would show their fidelity to the bill, and absolve themselves from responsibility for its defeat.

On the 21st instant, the minister of state addressed the assembly in a speech of remarkable directness and strength, a synopsis of which is translated in Appendix C, showing the grave international aspects of the question, repelling the charge of unwarrantable interference on the part of the United States, and admonishing the chamber of the consequences that would follow the loss of the measure. When Mr. Castelar rose to speak, his effort was regarded as a mere demonstration due to his own consistency as a public man, and in which he might, perhaps, decorate the grave of the bill with a few garlands of eloquence. When he resumed his seat, such was the profound impression made by his most convincing and persuasive appeal that it was evident he had carried the house with him, and the triumph of emancipation was assured.

A conference followed between Mr. Labro, a prominent deputy from Porto Rico, and the leading opponents of the measure, which resulted

in an agreement upon several amendments not affecting the principle of immediate emancipation. The next day the bill passed with entire unanimity in a full house, accompanied by manifestations of enthusiasm and joy peculiar to this impressionable and ardent race. Representatives of all parties joined in telegraphic communications to Cuba and Porto Rico, advising their friends in those islands to accept emancipation in the same spirit in which it had been proclaimed by the National Assembly. The government was asked to telegraph the text of the act to its representatives abroad, so that it might be communicated to foreign powers. And it was resolved to place a memorial tablet in the wall of the chamber, with an inscription commemorative of the event.

Already the effect of these incidents on the broader question of emancipation in Cuba is evident and irresistible. The powerful slave-interests in that island, always represented here by agents of consummate ability and address, is now preparing the way to enable it to shape the action the Cortes Constituyentes must inevitably take to complete the work of emancipation in Spanish territory. Assuming that the present act will be faithfully executed in Porto Rico, in a way calculated to avoid conflicts which would inure to the advantage of the slave-holders in Cuba, and that the republican government will allow a fair expression of the public opinion of both islands on the whole question of colonial reform, I venture to anticipate that during the present year slavery will cease in the Antilles, and with it must fall the whole fabric of arbitrary rule which has so long oppressed those remnants of Spanish power in America.

I have, &c.,

D. E. SICKLES.

[Appendix C.—Translation.]

Synopsis of the speech of Don Emilio Castellar, minister of state, in favor of immediate emancipation in Porto Rico, delivered in the national assembly, March 21, 1873.

[From La Gaceta de Madrid, March 22, 1873.]

Mr. Castellar began by stating that his friend, Mr. Bona, had pledged him to speak in this debate, although, for his own part, he would have preferred to remain silent, believing that action and not oratory was required from the ministers' bench. From the heights of the opposition benches he had formerly surveyed the realm of the ideal, but now, down in the government seats, he saw nothing but hard realities that did not readily yield to the adornments of oratory. He neither proposed, nor wished, to make a speech, but simply to make a few remarks on the subject under discussion in relation to its foreign aspects, from which point of view, as minister of state, charged with all the foreign relations of the Spanish nation, he was compelled to regard it. As for his own personal convictions and record in this matter, they were known to all. No public man could lay just claim to consistency or steadfastness who was not true to the legitimate convictions born of the progressive stages of his career. How did these begin? Among free peoples the first stage in public life was in the press and the club. By those means ideas were born, and grew, and became convictions. The tribune came next, and from its heights the same ideas and convictions should be repeated as had been learned in the previous stage. And from the rostrum the public man passes to the government, where he should strive to realize all that he had heretofore proclaimed and defended. This was his duty, and if mistaken or unsuccessful, his conscience and the judgment of history would bear witness to the rectitude of his purpose.

Who among them did not know the pledges that bound the minister of state and the whole government of the republic? He begged the chamber to pardon him if he cited his own abolition record in order to show how impossible it was for him to do otherwise than obey his antecedents. He said:

"I, gentlemen, when little more than a child, began public life, and my first speech, at twenty-one years of age, was in favor of emancipation. I passed afterward from the press to a professor's chair, where I devoted myself to the study of the first five centuries of Christianity. Three great problems met me—the decadence of the ancient world, the rise and spread of Christianity, and the inroads of the barbaric

hordes. Well, then, gentlemen, in my lectures delivered during those five years, I attributed all, absolutely all these to the influences of slavery. I said the ancient world fell, for it possessed not the virtue of labor, and because it gave itself up to the ignominy of servitude. I said the Christian religion, this religion that so comforts the soul—this religion, shorn of its dogmas and of the traditions of man's intercourse with his fellow-man and with his Creator—this religion is, in fine, the religion of the slave. The Jewish race prepared the way for it by grand apocalypses, which are the epics of servitude, epics written by the banks of the river that flowed in a stranger's land, beneath the willows of Babylon, by hands heavy with the manacles of bondage. Christ is of the royal lineage of the old kings of the enslaved race who have fallen; he is the conqueror of the oppressor, and if his cradle be the cradle of toil, his scaffold is the scaffold of the slave; it is the scaffold already red with the blood of Spartacus and his thirty thousand comrades. And in like manner, if Christianity be the spiritual religion that by its dogmas links man with God, in its social aspect it is the religion of the bondman. And when, in visions of the mind, I beheld those vast inroads of the barbaric hosts upon the Babylon of the west, fallen beneath the blasting bolts of the eloquence of him of Patmos—and fallen before human conscience—when I beheld the northern hordes break in upon the feastings of the pagan city and cast her ashes to the wind, I said, surely they are sent as destroying angels; they are the bondmen, the descendants of those hapless ones hunted down, made captive, carried to the arena; they are the sons of the gladiators, come to prove by this, their terrible vengeance, that God's justice shines on forever through all the pages of history. [Applause.]

"Afterward, deputies, whenever I have endeavored to study political and social problems, I have ever found them connected with the slavery question; and I said—not with reference to the Spanish middle class alone, but to the generality of the middle classes of Europe—it is a question of caste with us all to reach a radical and immediate solution of the problem of servitude, because the middle classes, who to-day make laws and govern, who to-day guide our social structure, alike under traditional monarchies and under parliamentary governments, these middle classes are the descendants of the helots, the pariahs, the slaves and the bondmen; and if we seek the ashes of our fathers, we find them in the tombs, rock-hewn by the toil of the slave; and I said the whole problem and task of modern civilization has been the molding of the ancient bondman into a freeman and independent citizen." [Applause.]

From the halls of the university he had passed to the halls of Congress, where he had advocated, and would ever advocate, immediate emancipation. None could forget how he had opposed Mr. Moret's law of 1870, because he deemed it futile, and because it did not grapple with and solve the problem; and none could forget how, on the memorable night when the vote of confidence in the Zorrilla ministry was carried almost by acclamation, he had defended the very measure now under discussion, and how he had declared that this measure was an evident necessity of the situation, and how it was besought and demanded of them by the opinion and the spirit of the age. He had contrasted these solemn pledges with his own conscience; what, then, should be said of him if to-day he were to deny his record and his convictions, and not support the law now pending. But no; he would advocate the measure with all his powers; he demanded its approval by the chamber; he appealed to the patriotism of the conservatives not to delay the inevitable result of this deliberation, lest they should draw down disaster and calamities on Spain and her Antilles. Democracy, and even the republic, were impossible without a sincere and loyal understanding between the liberal parties of Spain, and this law of immediate emancipation was the ground on which they had met and could meet in common. Had not the republicans coalesced with their opponents of the government, fusing all differences in one common aspiration? They had given the measure their loyal support. He, as one of the leaders of his party, had occupied an exceptional and unusual position toward the radical party during its long-continued crisis, for its whole tenure of power had been nothing save one lingering crisis, even as the present government of the republic is but a crisis. He and his colleagues had opposed the radical ministry in nothing, but had rather sought to strengthen its hands. Though sometimes unable to give it his vote, and even sometimes compelled to vote adversely, he had, nevertheless, maintained silence, save when he could aid the radical government with his voice and vote. Few knew how great a risk he had run in taking this course. He ran a risk from his own side, because he was resolved, at all hazards, to restrain his party from giving battle in the field; and he had run a still greater risk, for what he held and believed to be impossible might have, after all, been proved possible—a great risk, had it turned out that monarchy was, in reality, compatible with liberty and democracy; but he had preferred to run the chance of seeing his life-long convictions overthrown by the peaceful logic of facts rather than behold Spain plunged into the disastrous gulf of revolution. "Gentlemen," he said, "if I did this, if I dared unpopularity in obedience to my conscience, and if I resolved to oppose no obstacles to the perfect compatibility of liberty with monarchy, I now, from this seat, remind you of my record, and beseech you, in the name of the country, that you in turn will offer no obstacle to the compatibility of authority with a republic." [Applause.]

Mr. Castelar then entered on the subject-matter of his speech. The most serious arguments, he said, that had been used in reference to this measure of abolition related to the slavery question as viewed from the point of view of its bearings on Spain's foreign relations. Calumny, both within and without the walls of Congress, had assailed and blackened those who obeyed only the promptings of humanity and patriotism till it had become scarcely possible to pass through the thick cloud of infamous accusations heaped upon these upright men, as though to suffocate them; these slanders that seemed born of the foul air that rose from the festering sores deep in the heart and on the brow of their beloved country—the plague-spots of slavery! [Applause.]

It was his duty to declare that upon the slavery question there had been absolutely no foreign influence brought to bear. He was the better able to say this since, feeling that on him could rest no responsibility, he had studied all the documents in the archives of the ministry of state for many years back, in reference to this matter, in order that he might form his own free and unbiased judgment; and he must declare that the late cabinet had defended, with the utmost dignity, the honor, the autonomy, and the independence of the country. But why should not the whole truth be steadfastly faced and accepted in such a matter? Was the question of slavery, perchance, a purely national question, wherein the nation was absolute master of its sovereignty and its destinies? Who thought and held thus was in error. Slavery was an international question, and could not be otherwise. He would not now urge an idea he had frequently sketched, and still maintained, that certain institutions could not exist, and certain popular changes take place, save when they were universal in their action. But even when the telegraph and the railway were unknown, this synchronism of history, so to call it, still existed, and all the great movements and transformations of society took place in unison. Nay, more: a learned writer contended that the movements of Europe and of Asia coincided; and these again with those of America, even before America was known, and proved it by the historical monuments of all ages, as if one human spirit pervaded the whole planet. Had not all feudal Europe been stirred at once; and had not the tenth century witnessed the universal rise of guilds and communities? Had not feudalism fallen at one and the same instant throughout all Europe? Were not Louis XI, Ferdinand V, and Maximilian of Austria in truth one spirit, diversely personified? Who had at the same time discovered the mariner's compass, the printing press, and the telescope through which to dominate the earth? And when the discovery of America came to complete this epic of achievement, did not the Reformers, too, arise? Were not Henry VIII, Philip I, Charles V, and Philip II the same personifications of absolutism? Had not the liberal movements of Europe, the rising of the middle classes, the fall of kings, and the suppression of the Jesuits been simultaneous? What did all this tend to show? That great issues are not altogether national, and that all the grand problems of humanity have an international relation. "I remember," he said, "when I spoke in this very chamber of the influence our revolution of September would exert in all the problems of Europe, and how it was said, 'this Castelar is a poet, and dwells ever in the realms of the ideal. What! does he not tell us that our modest bridge of Alcolea, that our little revolution, which, like all our revolutions, is merely a change of the men in power; that even this is to influence all Europe and transform the whole world?' And, nevertheless, gentlemen, glance at what has happened since. The temporal power of the Popes has fallen; the Empire of France and its Emperor have fallen; the republic exists already in France and in Spain; Germany has attained unity, and all Europe has been transformed since our cannon thundered at Alcolea!" [Applause.]

Why was this, he asked? This synchronism of history would almost seem to prove the defeat of the materialists and the triumph of the idealists, like himself, for it showed the unity, the identity, and almost the divinity of the human mind. The slavery issue is one of these questions, and can be no less than international, because the true evangelical spirit that separates the eighteenth century from the nineteenth is the spirit of liberty and equal rights. And so it came to pass, one day, that the French convention proclaimed this great principle of equal rights, and a poor negro, who had risen from the abyss of bondage and degradation to the sublime height of the convention, arose and said, "You have declared the unity and equality of human rights, and the liberty of the human mind. I have a mind, thoughts, and speech like yourselves. I feel a soul within me, I have a conscience and reason, and yet I am not free; your boasted principles are but a lie." And there in that session, that great convention, which, though sometimes steeped in crime, had more than once risen to the heights of ideal right, that great convention arose and said, "We will not dishonor ourselves by debating this;" and they abolished slavery. "I have often described and pictured the scene that then took place; the doors were flung open as if by unseen hands, the negroes entered and embraced the men of the convention, and falling at their feet they wept, and to me it seemed that those sacred tears blotted out forever the blood stains from the hands of the French convention." [Applause.] And from that day nothing could stay the tide of emancipation from sweeping like a powder train along the earth. Yet a man, whose genius was styled supernatural by

his servile flatterers, and who at last came to be regarded as the colossal arbitrator of fortune and of war, sought to destroy the work of the convention, and restored slavery in San Domingo. And then, as the result of that great apostacy of the apostate Julian of the French revolution, there came that torrent of tumults and horrors and crimes which, though crimes, were no other than the deeds done by all nations, from Spain to Russia, in defense of liberty and independence. [Applause.] And then was seen a strange thing. The nation that most opposed the French revolution was England, the least democratic, but the most liberal of the powers of Europe, for democracy and liberty are not always synonymous. England! Yes; England, whose dread is that the lower classes should come to govern her, and who therefore seeks to repress them. England does not blindly oppose reform. When an idea possesses life, when it springs from the ballot-box and from the people, when it reaches the heights of a parliament, when it combines all the elements that the principle of emancipation now combines among us, England does not oppose it; and this should be a lesson to the conservatives not to hinder the revolution from budding and bearing good fruit on the old Latin stock. For revolutions are avoided when governments lead reforms and welcome reforms, and when they soften them and put them into practice; but when reforms are blindly resisted, when self-evident principles are denied, until their realization in a single day is demanded from the crests of barricades or the seats of a convention, none can foretell the end of the convulsions thus born, anarchy or dictatorship following, which will at last destroy the Latin races if they be not brought to realize their own interests, and led to strive to harmonize order with liberty and government with democracy. [Applause.] So England therefore abolished her slavery, under conditions, it may be, but still she did abolish it, and thereupon the movement spread to those European nations in whose colonies slavery existed, and, whether by freeing slave children thereafter born, or by immediate emancipation, the extinction of slavery became general in almost all European possessions. And afterward another strange thing was seen. Was a revolutionary nation the next to abolish its slavery? Was it one of those nations that ever bears aloft the smouldering brand of revolution? Was it France, or Spain, or Italy, or even Germany? No! It was Russia. In Russia there arose a combined movement of literature and philosophy which all the power of her autocrats could not restrain. The Czar Nicholas himself rewarded the author of the romance called "Dead Souls," (*Les Ames Mortes*), with a book whose leaves were bank-notes, without, perchance, being aware that by that act he rewarded the revelation of the condition of the serfs. And, as often happens, for there is power in ideas, this thought descended and spread from the summits of a sovereign mind over all the steppes and vast domains of Russia, and begot a soul in the bosom of the serf. Thus did the book bring about this change. As from the lofty peaks of the Alps, desert and frozen, whose thin air can scarce be breathed, flow downward into the deep valleys those rivers bearing the names of the Rhine, the Rhone, and the Danube, filling the plains with life and wealth, and by the fruitfulness they give to labor and tillage, fulfilling throughout the land the work of the Creator. [Prolonged applause.] Even so literature and philosophy do their work. An obscure thinker, in the solitude of his closet, moves revolutionary torrents that agitate all minds; and at last the Russian Empire cried, "Serfdom is no longer possible. Our soldiers have been conquered because they were not the soldiers of a free people; they have been conquered because they are mere machines—because they are serfs." And in the face of a resistance greater than all the privileged classes of Spain can oppose to us here, and wielding the scepter of despotism, the Czar Alexander abolished serfdom in Russia. Nay more, not only abolished serfdom, but gave the serfs the germs of independence. And from thence the question passed to the United States; and the United States sacrificed themselves and their treasure, sacrificed a million of their sons and their boundless prosperity to redeem their millions of slaves; they, who had not even ranked the blacks as men, and who felt all the aristocratic disdain of the Saxon towards his inferiors; they who saw in the negro race a peril to the sublime work of Washington.

Was it possible, after these grand achievements, Spaniards could maintain slavery? Could Spaniards deny that slavery was an international question? Had not Ferdinand VII, in their name, covenanted with England to abolish the slave trade and permitted their ships to be searched, and tribunals, foreign in part, to be established on Spanish soil to that end? And now the champions of traditional conservatism and monarchy were amazed at the moral influence exerted by a free people, when on their own shoulders they bore the brand set there by England! [Applause.] There had not been a single house of commons or of lords that had not raised protests against the action of Spain or of her captains-general in executing the slave-trade treaty; nor had there been a single Spanish government that had not been compelled to give England the explanations or tender her the apologies she so imperiously demanded as a right.

Well, then, representatives, has the United States Government done thus? Ah, gentlemen, permit me to protest here and now against the unseemly language—zealous and patriotic, without doubt, but still unseemly—that has been uttered in this place

concerning the representative of the United States, and concerning his nation and its President. Let me protest in the name of this democratic nation, of this republican nation, which can do no less than cherish deep reverence and admiration for the glorious people that in its lifetime of less than a century has solved the problem toward which we have so long been tending, the problem of making democracy the twin-sister of liberty and building up authority and government under the republic. [Good! good!]

When, moreover, it is remembered that in the midst of the general want of confidence shown by Europe in our democracy and toward our republic, the United States hastened to recognize us, and by the act of giving us their moral and material guarantee to proclaim us to the world unhesitatingly as a people worthy of self-government, should we not owe a double debt of gratitude to that great nation that forms so high and favorable a judgment of us? And when, besides this, the President of the United States, in an address which is his own personal work, a speech for which he alone is responsible, and in preparing which he does not even have to consult his cabinet advisers, because it is his second inaugural address—this illustrious man, who, on the field of battle, has renewed in our day the triumphs of Alexander, says, "I seek neither war nor military predominance nor conquest; I simply desire liberty and democracy. I would wish to see all the nations in possession of one common right." And the man who speaks thus should he not be hailed with joy by a republican chamber, and recognized as the colossal figure in history, closing the era of conquest and inaugurating that of liberty and right?

Apart from this, the associations of Cubans formed in the United States are such as cannot be prevented under their laws. Even as we are not permitted by our laws to interfere in any way with a public association organized to effect a change in the form of any foreign government, for if we did we would infringe our constitution. What! do the members of this assembly hold that under our constitution we can prevent the formation of any public association in Spain hostile to a foreign government so long as it does not pass the limits of moral propagandism? We could not do so; the most that we could constitutionally do would be to prevent all forcible and aggressive acts, such as expeditions and shipments of arms. Very well; this is what the United States have done, to the utmost of their power, under all their administrations. This, gentlemen, is evident. It is a question of domestic policy. In the time of a celebrated minister, who sought to win the presidency by advocating the annexation of Cuba and Porto Rico to the Southern States, and thereby add two more slave States, then it was easy to understand why the Southern States in particular would endeavor to aid filibustering expeditions, as they in fact did; and the only time the integrity of our national domain and of the islands of Cuba and Porto Rico was menaced, was in the times of slave-holding rule, for the slave-holders were vitally interested in throwing two new slave States into the balance of the American Union.

But now, what interest have they in possessing Cuba and Porto Rico? None, absolutely none! Such an act would introduce an unstable element into the confederation; it would introduce a race that does not harmonize with the Anglo-Saxon race, which has always been at war with races not of its own blood; and, perhaps, it would compromise the greatness, the prosperity, and the peace of the people who have reared that marvelous Republic. And this the United States perfectly understand. But, gentlemen, their frontier, bordering close upon our frontier, and an insurrection being flagrant in Cuba, they have done, as England has done, and addressed us, not menaces—for they well know the dignity of the Spanish nation—not notes that could in any manner exert any influence upon our domestic affairs. No, gentlemen, they have addressed us friendly and courteous advice, such as all governments may tender to one another in the grand parliament of civilized nations. [Mr. SUAREZ INCLAN. How about the note of October 29th?]

"I shall speak of that note. In the first place that note, although it foreshadowed a change of attitude, was not a note addressed to the minister of state here in Spain, but was a note to the United States representative in Madrid, and in that note the latter was not instructed to read it to, and leave a copy with, the Spanish minister of state." [A REPRESENTATIVE. How about publishing it?] "Publishing it may have been a violation of confidence, or a simple oversight. Why, only recently I myself came near being the victim of an oversight of this kind, and was obliged to use the utmost activity to prevent the publication of a note which, nevertheless, came very near being published. [Rumors interrupting the speaker.]

The PRESIDENT requested the members not to interrupt the orator, but to await their turn to say what they had to say.

Mr. CASTELAR. "Although the publication of that note may have been in accordance with the diplomatic usage of the United States, the minister of state was not officially made cognizant of it; it was neither read to him nor left with him; it had no influence on his decisions, which were prompted only by his own conscience. Let us not reach such a depth of humiliation as to seek to degrade the nation in order to put a party to shame. The minister of state of the late King was a minister of Spain. His eloquence, his renown, his glory, belong to us all; his honor is our honor, his good name is our

good name, and his patriotism being known, we should recognize and confess that he would have done all that mortal could do to protect the dignity of Spain, which none will suffer to be trodden under foot, so long as a patriot breathes on our soil. No! the Zorrilla ministry had no knowledge of that note; it was never informed of it; it was ignorant of its existence at the time when it had already resolved upon the abolition of slavery.

"The radical party is under pledges respecting the Cuba and Porto Rico question, you say. Are not we also? And I, who have not yet had a conversation upon American policy with the worthy representative of the United States, who has often called to see me—although the pressure of circumstances has prevented me from conferring with him—I, gentlemen, have to declare to you that I am an advocate of the immediate abolition of slavery in Porto Rico; I am an advocate of abolition in Cuba, with a due regard to all interests; I am an advocate of colonial reforms, and of extending every possible liberty to Cuba and Porto Rico; but if any one were to recall these convictions to me, and seek to bind me by them, I would answer, these pledges are with my conscience and my country, and a foreign nation has no concern therewith. And the worthy minister of the United States, who knows us and respects us will never seek to the Spanish nation, and the Spanish republic.

"The radical ministry, gentlemen, when it came into power, found itself pledged before the nation to reform the government of the Antilles, and to endeavor by all possible means to abolish slavery. But, gentlemen, when the ministers of the conservative party were in office, and when friendly counsels were vouchsafed to them in a certain sense by the United States representative in Madrid, did it perchance happen that they did not offer him certain indirect guarantees by way of satisfaction; that they did not assure him that certain reforms would be inaugurated at a certain time? And, nevertheless, no one has thought, neither do I think, that, because some nations interest themselves in the fortunes of other nations, or that, because some domestic questions may be related to other foreign questions, those ministers have compromised the dignity and honor of the nation. The slavery question is, in reality, an international question, as I have said before. What would the government say, if a foreign cabinet should say to it, how are you going to settle the question of the traditional tribunals (*foros*) of Galicia? What are you going to do about the *rabassa morta* of Catalonia? But no foreign ministry would say this, because these are questions solely and absolutely for ourselves to decide; but in the slavery question, the spirit of the human race, the advance of ideas, the pledges of the Spanish nation, and even her treaties, all lend to the slavery question an international character.

"And thus it is, gentlemen, that in relation to this question, frankness, which in such matters is the best policy, leads me to say that all, absolutely all the cabinets of Spain have been approached by England. There has not been a single session of the English Parliament that has not found fault with our administration in Cuba, nor a single English minister who has not preferred some claim against us.

"But notwithstanding that it is an international question, at the time it was brought up by the Zorrilla cabinet it was not, and had not been the ground of any foreign representations whatever. No one had requested the ministry to present this measure, no one had demanded it. The question came before the council of ministers, and some very patriotic and very liberal ministers differed from the rest of the government. This led to a crisis, and as soon as the government was recognized, it at once, of its own free and spontaneous act, brought the bill for the abolition of slavery in Porto Rico before the chambers.

"Ah, gentlemen, I will say no more upon this point, for I deem it a dishonor and an insult to a nation to believe that any of its sons could be controlled by a foreign impulse. I have only to say that, if in the brief time I have filled the ministry of state or may continue to fill it—and the same declaration has been made by all the ministers of Spain—any nation, howsoever powerful it might be, in circumstances as difficult and grave as these, when we so much need the friendliness of all the powers, if any nation whatever dare to offer me the slightest insult, I, as a true and honorable representative of my people, would prefer the utter destruction of my country rather than the loss of an atom of her honor. [Applause.] And other governments have said and would do exactly the same."

The radical party was bound by public and solemn pledges of honor and conscience. The record of the republican party made its pledges even more sacred. The emancipation scheme was presented and had practically been approved, almost unanimously, on the night of December 21st. From the commencement of the debate the main conservative argument was the haste and imprudence of bringing forward immediate abolition. But the conservatives themselves had rendered any gradual measure impossible. When they were in full power, obeyed by all, undisturbed by any changes in the form of government from a democracy to a monarchy and from a monarchy to a republic, then was the time to bring themselves up to the advanced ideas of the age, to study the difficulties of the problem; and when the representatives from the Antilles had come here to hear their views, and to frame a measure of emancipation which, even

though gradual, say in ten years, would have settled the problem by this time, they had instead offered blind resistance. They forgot that these problems are beyond man's control, and their inaction, which would have left the negro to drag his fetters for years and years to come, now made immediate abolition inevitable.

"Ah! gentlemen," he said, "do not fall to-day into the same error. If I had a right to supplicate aught of you, I would beseech you, almost upon my knees, not to interpose obstacles to the passage of this law. For, know you not the perils and difficulties that surround us? Can none of you foresee? Can none of you forecast the spirit, born of the absolute freedom this government, if it be still in office, will give to the coming elections, which will be reflected in the future constitutional convention? And if from this soil so deeply sown with revolutionary ideas, from this sleeping volcano, from this land teeming with a widespread agitation of conscience and of thought, where it almost seems as if all the elements and all the ideas emanating from the human mind were gathered together, as by the unseen winds, here on the confines of Western Europe, if from this field so rank in all these ideas should arise an unreasoning, enthusiastic, and spontaneous movement in the future convention, how great would be your responsibility! Ah, what a commanding argument could we then use, we who represent moderation and prudence, if we could say to them, pause and consider; look at things practically; was it not also said that slavery would not be abolished in Porto Rico, and behold it is abolished; do not therefore imperil by your acts the lovely island of Cuba. We could say this with authority if you give us your vote and your assent now. But if emancipation in Porto Rico be not now decreed, I fear that the future representatives of the people will not pause for any human consideration. I fear lest they shall say in their generous impatience, 'All reforms delayed are lost!' I fear lest by a spontaneous outburst of feeling they will do without forebodings what it is in your power to avoid now by moderation and prudence in passing this law.

"The government of the republic need make no protestations concerning the integrity of our domain. It solemnly engages to redouble its efforts and its sacrifices to maintain it at all costs, as a sacred legacy of past generations, which it must preserve intact for the generation of to-day and transmit to those to come; but do not hinder, gentlemen, the fulfillment of this inevitable duty. What, gentlemen, you believe that a reform like this may be thus brought into notice, that the hopes of the slaves may be thus raised, that the question of this reform may be thus agitated before all the world, and then when freedom is seen and almost grasped by them you can forthwith snatch it away from thirty thousand slaves!

"I have not initiated this reform. I have not brought it before you. I have maintained a patriotic silence. I have stimulated no cabinet to action. I would not have it said of us that we imperiled the integrity of our domain; but I must now say one thing, and that is, that if this law for the abolition of slavery in Porto Rico be not passed, I renounce, before you all, my responsibility for whatever may happen. [Applause.] I wash my hands of it all; but if the law be passed, then you may throw all the responsibility upon us. [Applause.] We promise you to die a thousand deaths rather than consent that an atom shall be taken away from the integrity of our country. [Stormy applause.] If the abolition of slavery in Porto Rico bring dangers upon Spain, I swear it, that we, the republicans of Spain, will deem it an honor to die in the tropics for the salvation, for the liberty, for the independence, and for the integrity of Spanish soil. [Prolonged applause.] But, gentlemen, if it be not voted, I am ready to proclaim before Europe, before America, and before the whole world, that it has been defeated because this assembly, born under a monarchy, and which, under a monarchy, proposed the abolition of slavery, has prolonged slavery in order to compromise and even dishonor the republic. [Sensation. Loud murmurs interrupt the orator.]

"Gentlemen, this is not a party question. It cannot be made a party question; it is an eminently national question. No, do not, I beseech you, make it a question of conservatives and radicals and republicans. I cannot give it such a name, for it can in nowise assume such a character. But yesterday, but a day or two ago, Mr. Padial on one hand, and General Sanz on the other, in this chamber, inspired by motives which they doubtless thought were noble, hurled harsh words and anathemas at each other; and I for my part exclaimed, 'Good God, are we to have also, in the midst of the Spanish congress, this rivalry between creoles and peninsulars—[loud rumors]—this rivalry accursed of God, accursed of nature, and accursed of history!' [Vociferous applause.] And you, it is for you to give a proof of unity, of greatness, in casting these quarrels aside, and being reconciled, and saying that which ever should be said: Neither here nor there are creoles nor peninsulars; here and there alike, we are all Spaniards, children of one mother, of the same spirit, and the same race; for all bear the blood of the Cid and the blood of Pelayo in their noble veins, and the spirit of Spain in their generous souls.

"And so I beseech and implore you, conservatives, this is a national question, a question of humanity. Vote the abolition of slavery in Porto Rico, and I in turn pledge you that all interests shall be heard and borne in mind, and carefully consid-

ered when emancipation in Cuba comes before the constitutional convention. For, gentlemen, although I have little, although I have nothing, I have still my humble, honest word, and a heart full of patriotism, ever devoted to my country's service. I admonish you, conservatives, that you must have a spark of patriotism and of foresight. If you possess these, then this very afternoon we shall make the effort to pass this law, and see whether it be possible to abolish slavery. [Cries of Vote, vote.] And if we fail, then on your heads, and not on ours, be the responsibility. And if we succeed, I say to you, gentlemen, that we shall indeed have written a glorious page in our history.

"Under all aspects, these are solemn and difficult moments. The safety of the country—and why deny it?—is endangered on every side. We need all the sons of Spain, we need to forget all our dissensions, in order to save order, to save the principles of authority, to save the integrity of our territory, to save the republic, which is our country itself. Be moved by an impulse of patriotism, and you will be assured of the gratitude of all the generations to come, the benediction of history, and, dearer than all these, the benediction of our conscience, like the peace of God, will rest upon our souls." [Tumultuous applause. Many representatives crowd around the orator and congratulate him with enthusiasm.]

No. 400.

General Sickles to Mr. Fish.

No. 566.]

UNITED STATES LEGATION IN SPAIN,
Madrid, March 30, 1873. (Received April 23.)

SIR: On Tuesday last, pursuant to appointment, I had a conference with the minister of state and his colleague of the colonial office respecting several pending questions.

In reply to a reference made by myself at the outset to the case of Santa Rosa, Mr. Castelar informed me that he was released, and he had received an expression of your thanks, through Admiral Polo, for the action of the Spanish government in the matter. Mr. Sorni added, that the release of this person was his first official act after entering the colonial department. Mr. Castelar said the omission to acquaint me with the action of the government, in reply to my note of the 2d ultimo, must be attributed solely to his pre-occupation in the assembly and in the cabinet council.

Passing to the subject of embargoed estates in Cuba, Mr. Castelar stated, in reply to a preliminary inquiry, that he had not received from his predecessor any explanation of the question. Having recapitulated the origin and bases of our reclamations and the course of the negotiations which had taken place, I presented two propositions for the consideration and action of the Spanish government, as follows:

First. That the embargoes, so far as they affected the property of citizens of the United States, were violations of the seventh article of the treaty of 1795, which expressly forbids all embargoes, and also because the property was seized by the arbitrary act of the executive authorities, thus depriving the owners of the right to a judicial hearing and judgment expressly guaranteed by treaty.

Second. That the reference of these reclamations to the mixed commission sitting in Washington was a dilatory and inadequate remedy, and that in all cases in which evidence had been presented showing that the claimants were citizens of the United States the right to the immediate restitution of their estates was clear and unquestionable.

Having explained the arrangement made with Mr. Martos before his resignation, by which the pending cases were referred for immediate action to the Spanish minister at Washington and the captain-general of

Cuba, I stated that your reasonable expectation of a satisfactory result from this disposition of the matter had been disappointed, since no action had been taken, and no reason had been assigned for the continued delay; and I added that some of these cases had been pending more than two years, that the embargoes in certain instances had been so improvidently ordered that the property of one party had been seized for the alleged offense of another, and that in another case the promised restitution was impeded by the refusal of one branch of the administration in Cuba to furnish evidence demanded by the bureau having the matter of these embargoed estates in charge. Under these circumstances, and in view of the vexatious character of these proceedings, I urged the prompt action of the government of the republic in releasing all property of American citizens now held by the Cuban authorities in violation of the treaty of 1795 and of the law of nations.

Mr. Castelar took notes of the essential points of my statement, and promised to inform himself of the purport of my several communications addressed to his predecessor with reference to this class of reclamations; and he added that I might assure you of his desire and purpose to remove at once any just ground of complaint on this subject.

Mr. Sorni, on his part, repeated the same assurance, and remarked that he would acquaint himself with the state of the question so far as his department was concerned, and see that no unnecessary delay should happen in the disposition of the pending cases.

I then suggested for the consideration of ministers that great abuses had been committed in the matter of embargoes; that, as a war measure, they had done more harm than good to the government; that the practice of seizing large properties by executive order on mere rumor, and often on the suggestion of persons inimical to the owners, had swelled the ranks and increased the resources of the insurgents, and that the proceeds of these estates had been so manipulated as to demoralize and enfeeble the administration of affairs in Cuba. In view of these, and other like reflections, I pointed out the expediency of a general measure restoring all estates confiscated by arbitrary decrees, and confining any future sequestrations that might be deemed necessary to the regular and authorized action of the established judicial tribunals.

Mr. Sorni, who is a lawyer of distinction, replied that both in a legal and administrative aspect there were serious grounds to question the justice and utility of these proceedings, and it was his intention to make this matter the subject of a special instruction to the captain-general of Cuba.

Referring to the correspondence that had taken place respecting the complaints of our shipmasters and merchants on account of the unreasonable fines and exactions imposed on American vessels in Cuba, I begged the attention of the colonial minister to this subject.

His excellency kindly promised that it should not escape his notice.

I then remarked that with a radical change in the administration of Cuba and Porto Rico it would not be difficult to avoid, for the future, a repetition of the numerous questions that had arisen during the past four years between the United States and Spain; that now, more than ever, the Government and people of the United States would be disposed to cultivate the most friendly relations with this country; that it rested with the government of the republic, by means of simple justice to its American possessions, to deprive the insurrection of its hold upon public sympathy; that with the abolition of slavery, the reform of the administration in Cuba and Porto Rico, and the concession to the people of a proper share in the management of their local affairs, the motives which

had incited the war of independence would disappear; that the commerce and intercourse between the United States and those islands created legitimate interests in their welfare to which no government could be indifferent, and these were the surest guarantees of the sincerity and disinterestedness of our counsels; that if we desired to acquire those possessions we would not be heard appealing to the sense of justice of the mother country for a milder and more conciliatory rule in Cuba and Porto Rico, since it would be for our advantage if Spain continued to provoke them to hatred and sedition; that if it were true that whatever contributed to alienate the affections of the creole population from Spain must facilitate and hasten a separation, nothing could better serve the supposed desire of the United States to possess these islands than the past policy of Spain in holding a large portion of the people in absolute servitude and the remainder in a qualified condition of caste which could not increase their desire for a change of allegiance; that the large emigration which annually leaves Galicia and the Asturias for South America would naturally flow towards Cuba and Porto Rico, thus increasing their wealth and strengthening their loyalty, if emigration were not repelled from the Spanish possessions by slavery and its kindred contempt for the laboring classes; that heretofore the irreconcilable antagonism between American institutions and the system of Spanish rule in their colonies in the Gulf, had been a constant source of perturbation in the otherwise congenial relations between the two countries; that now this conflict between self-government and despotism ought to cease with the extension of free institutions to all in the Spanish Empire; that the establishment of a republican form of government seemed to afford the best, and perhaps the last, opportunity of regaining the attachment of the Cubans; that any considerable delay in putting in force the milder policy of republican rule in those parts of the island, at least where the peaceful condition of the population invited conciliatory measures, might confirm the belief of the people that all parties in Spain were disposed to treat them as an inferior race not entitled to the rights belonging to Spaniards; that nothing had contributed more to increase the sympathy felt in America for the Cuban insurgents than the fact that the Spanish revolution of 1868 brought no alleviation of the wrongs of Porto Rico nor of the eastern and western departments of Cuba, whose loyalty remained unshaken; that so soon as Cuba and Porto Rico were treated on an equal footing as an integral part of the republic, enjoying the same liberties and laws and free institutions established in the peninsula, the insurgents would no longer find encouragement in American opinion, and any attempt on the part of European powers to deprive the Spanish possessions in the Gulf of Mexico of a republican form of government might justly be regarded as an inadmissible interference with rights entitled to our consideration and respect; and that for these reasons, justice, patriotism, and self-defense commended the inauguration of a republican policy in the Spanish Antilles.

Mr. Castelar replied that the executive duties incident to the late change of government had so engrossed the attention of ministers since the formation of the present cabinet that it had been impossible to give due consideration to the important questions to which I referred; that I would nevertheless find in the well-known views of himself and his colleagues ample guarantees of their disposition to do ample justice to Cuba and Porto Rico. A great step had been taken in the unanimity and good feeling with which the emancipation act for the latter island had been enacted; in the execution of the act of 1870, the government that very day had ordered the liberation of more than ten thousand slaves (*emancipados*)

in Cuba, a measure which he trusted would be regarded by the United States as a proof of the sincere purposes of this government; that the superior offices in Cuba and Porto Rico would be at once confided to eminent and able men, distinguished for their liberal opinions and enjoying the confidence of the republic; that the Cortes Constituyentes, clothed with plenary authority and animated by the most advanced ideas of the epoch, could not fail to sweep away the remains of the traditional policy of the old monarchy; that with the abolition of slavery, the existence of which could not be prolonged, the governments of Cuba and Porto Rico must be essentially modified, since the system of servile labor had been unhappily the unavoidable basis of arbitrary rule; that meanwhile the government would do all in its power to prepare the way for the inauguration of republican institutions in the Antilles; and with respect to their intercourse with the United States, with whom, as a sister republic and a loyal ally, Spain desired relations of intimate confidence and friendship, I could not doubt his sincerity when he assured me that nothing would be wanting on his part to promote the most cordial and satisfactory understanding between Spain and America.

With reference to the intimation given me by his excellency of an immediate change of governors in Cuba and Porto Rico, I suggested that the matters I had brought to his notice might conveniently be made the subject of fresh instructions to the personages now to be appointed; and I expressed the hope that in addition to the particulars already pointed out these instructions would include the cases of American citizens when arrested and confined in prison, in order that they might be allowed to communicate freely with the nearest United States consul, and obtain the advice and assistance proper to their situation. And in conclusion I remarked that it might be well to furnish the captain-general of Cuba with a copy of the seventh article of the treaty of 1795 as his guide in the questions of embargoes and in the treatment of citizens of the United States who might have occasion to claim the protection of the ordinary judicial tribunals for their persons and property.

Mr. Sorni, the minister of the colonies, replied that in preparing the instructions to be given to General Pieltain and Primo de Rivera, my suggestions would not be forgotten.

I am, &c.,

D. E. SICKLES.

No. 401.

General Sickles to Mr. Fish.

No. 567.]

UNITED STATES LEGATION IN SPAIN,
Madrid, March 30, 1873. (Received April 23.)

SIR: I have the honor to forward herewith, for your perusal, a translation of an appeal to the nation, published by the executive under date of the 25th instant. The Carlists have lately given a character to their hostilities, which is not too strongly denounced by the government. Repeated instances of cruelty to captives, barbarous acts of violence to non-combatants, from which even women and children are not always exempt, firing on railway trains with their passengers, burning depots, stations, dwellings, and even churches, are among the authenticated reports of outrages committed by the partisans of the pretender. Some

of these guerrilla bands are led, and most of them are attended by priests, who incite their adherents to all sorts of crimes by appeals to the religious fanaticism common to the population of the Pyrenees. It seems inevitable, in view of these occurrences, that Spain is again to suffer the scourge of a war of extermination, like that which disgraced modern civilization in the dispute between the eldest daughter of Ferdinand VII and his nephew for the succession to the throne.

It is said that, in deference to repeated remonstrances made by this government, the French authorities have promised to exercise more vigilance on the frontier in preventing the use hitherto made of their territory as a base of operations for the Carlists forces. The headquarters of the Prince have been for some time established in the French Pyrenees. It is supposed that he has about ten thousand men under arms in Spain, and if more equipments are obtained, as is probable from the proceeds of subscriptions made in Paris and London, the strength of the insurgents may be considerably increased.

I am, &c.,

D. E. SICKLES.

[Appendix.—Translation.]

Address of the Executive Power of the Spanish Republic to the Nation.

THE EXECUTIVE POWER TO THE NATION.

SPANIARDS: The government elected by the vote of the Cortes, whose choice has received the assent of the nation, would deem itself unworthy of its high charge and unfit for the responsibility it assumes if it disguised the truth, however bitter the truth may be, with palliatives only fit to deceive communities worn with debility or sunk in hopeless impotence.

And this truth, this fact, is that the partisans of absolutism, who took arms, as their proclamations averred, to overthrow a foreign king, have still persisted in their stubborn rebellion even after the nation, by the proclamation of the republic, has entered upon the full exercise of its own rights and has thereby asserted its sovereignty, to which all parties are bound to yield.

In vain is the fullest liberty accorded to ideas of every stamp; in vain is the ballot-box open to the free vote of every citizen; in vain does the approaching electoral verdict of the people secure the government of the nation to a majority of its citizens. The royalists, well knowing that the younger generations, nurtured and brought up in the ideas of the age, will never voluntarily accept their rule through the channels of freedom and of law, now seek to subjugate them forcibly by fire and steel.

To do this they are destroying the means of communication, cutting the telegraphs, laying waste the fields, imposing forced tribute upon the villages, burning the town archives, committing highway robbery, immolating helpless and defenseless creatures, shooting those who surrender after heroically resisting their bands, and amidst the smoke of their burnings they respond to the birth of a republic of reconciliation and peace with the awful spectacle of a restoration of the eras of war and vengeance.

The time has come for the Spanish nation to realize with ripe judgment the vast extent of the evil, and to apply, with its traditional heroism, a prompt and powerful remedy. The holy war of liberty should respond to the barbarous war of tyranny. The government, though weighed down by the gravity of passing events, will not cease in its efforts to ward off the dangers that menace public order, to restore discipline in the army, and to arm the volunteers of the republic. The soldiers of Catalonia are already in the field attacking the enemies of freedom. The brave and well-disciplined army of the north has sealed with its blood, on heroic fields of battle, its loyalty to the republic. The troops in Valencia know no repose. The roving bands in Andalusia are disheartened and are surrendering under the formidable attacks that meet them on every side. And wherever the rebellion has sought to effect a rising in the remaining provinces, it has been combated and annihilated by the people and the troops in happy unison.

Fully appreciating this gallant conduct, the government is untiring in its efforts to unite all possible means and forces. The resources voted by the Cortes for the national armament are being made effective as rapidly as the laws will allow. The advantage

inuring to the army by the recent reforms are being realized with all the zeal and dispatch permitted by the poverty of the treasury. The free corps now being formed will be put in the field as rapidly as circumstances will permit. The military and civil authorities of the province most severely ravaged, fully realize the gravity of the situation, and are resolved to meet open warfare with open warfare, without truce and without quarter.

But republican governments need the co-operation of all their citizens, without exception, if the social structure is to be in reality self-governing. Each citizen should be brought to know that in defending the republic he defends his own moral dignity and his own inalienable rights. The liberal parties should remember that their highly-prized liberty—that liberty for which they have made so many sacrifices—is indissolubly united to the forms of republicanism. Let no means of warfare be spared, even as none were spared in our civil war. Let the citizen militia be put on a war footing; let the free corps be armed; let our citizens arm to maintain public order and protect their hearths and homes, in order that our soldiers may be free to fall with force and vigor upon the rebellion bands. Thus alone can we show our title to the liberty held in store for the nations who redeem and save themselves by their own strength. Thus only, and by most heroic efforts, can we save the republic, and, with the republic, our liberties and our country.

MADRID, *March 25, 1873.*

ESTANISLAUS FIGUERAS,

President of the Government of the Republic.

EMILIO CASTELAR,

Minister of State.

NICOLAS SALMERON,

Minister of Grace and Justice.

JUAN ACOSTA,

Minister of War.

FRANCISCO PI Y MARGALL,

Minister of Interior.

JUAN TUTAN,

Minister of the Treasury.

JACOBO OREYRO,

Minister of Marine.

EDUARDO CHAO,

Minister of Public Works.

JOSÉ CRISTOBAL SORNI,

Minister of the Colonies.

No. 402.

General Sickles to Mr. Fish.

No. 569.]

UNITED STATES LEGATION IN SPAIN,

Madrid, April 5, 1873. (Received April 29.)

SIR: I have the honor to inclose herewith a translation of a note from the minister of state, dated 27th ultimo, acquainting me with the action of the government of the republic in liberating a considerable number of slaves in Cuba not duly registered when the last census was taken. I have also the pleasure to add a translation of the official communication on this subject from the colonial minister, Mr. Sorni, to the captain-general of Cuba, which was kindly placed in my hands to-day at the legation by the minister. The question presented depended on the true construction of section 19 of the act of July 4, 1870, which is as follows:

“Article 19. All those (slaves) shall be declared free who do not appear registered in the census made in the island of Porto Rico December 31, 1869, and in that ordered to be completed in the island of Cuba on the 31st of December in the present year 1870.”

It is estimated that more than ten thousand persons heretofore illegally held as slaves in Cuba will be emancipated by this decree; although in part classified as “emancipados,” there is not much reason to doubt that

most of them have been brought to the island contrary to law within the past three years.

I shall be glad to have authority in the name of the President to make suitable acknowledgment of the action now reported. Both Mr. Sorni and Mr. Castelar seem disposed to do all in their power to promote the best possible understanding with the United States. In this relation I beg to invite your attention to the passage in Mr. Castelar's speech, accompanying my 560, in which he maintains the international character of the slavery question, and recognizes the propriety of the suggestions on that subject that we have offered to Spain.

I have again commended to this government the importance and the justice of further measures in effecting the liberation of two classes of freedmen embraced in section 5 of the act of July 4, 1870. They are described as "slaves belonging to the state" and "emancipados" who had been under the protection of the government. Many thousands of these have been leased for long terms of years contrary to law. I am assured by Mr. Castelar and Mr. Sorni that they will not fail to give due attention to the situation of these unfortunate people.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

Mr. Castelar to General Sickles..

MADRID, *March 27, 1873.* (Received March 27.)

The minister of state presents his compliments to General Sickles and has the honor to inform him that under date of the 24th instant the minister of Ultramar addressed a communication to the captain-general of Cuba in reply to the inquiry as to the status of those slaves registered (*empadronados*) after the date fixed by law, stating to him that in conformity with the evident intent of the second paragraph of article 30 of the regulations of August 5, 1872, and in conformity with the opinion of the full council of state, the government of the republic has decided that the persons referred to in the captain-general's inquiry shall be declared free, and that in case indemnification be demanded, the same shall be decided by the proper authorities after examination of the documents and facts of each case.

Don Emilio Castelar avails himself with pleasure of this opportunity to repeat to General Sickles the expression of his sentiments of sincere appreciation of esteem.

[Appendix B.—Translation.]

COLONIAL DEPARTMENT, SECRETARY'S OFFICE, SECOND BUREAU.

YOUR EXCELLENCY: The inquiry made by your excellency in your official dispatch No. 878, of September 30 last, concerning the status of slaves not registered (*empadronados*) within the prescribed term, and all the remaining antecedents of this important matter as well, having received due attention, and in consideration of the fact that neither the stringent provisions of the nineteenth article of the law of July 4, 1870, nor the interpretation favorable to the freedom of the slaves which should be given to that article in deciding all doubtful cases arising in its execution, nor the precedents established with respect to the registry and formation of a census of the slaves under the royal decree of September 29, 1866, concerning the suppression and punishment of the slave-trade, allow of the acceptance of the reasons alleged in your inquiry already mentioned, and in your confidential letters of October 30 and November 14, soliciting that the slaves in question should be included in the census, the government of the republic, adopting the principles and intent of the second paragraph of the thirtieth article of the regulations of August 5, 1872, and in conformity with the opinion pronounced by the full council of state, has resolved to decide the questions presented in your excellency's dispatch in such a sense as to declare free the persons referred to, and in case a demand for indemnification be made by the proprietors, such demand shall be made in due documentary form, in order that it may be decided what parties are

entitled to remuneration, in which case application will be made to the Cortes for the necessary credit.

Your excellency will give to this ministry a full account of the measures you may decree in the execution of the present instruction, in order that the government may possess ample and accurate knowledge of all that relates to the grave question of slavery, and to this end I also recommend to your excellency the speedy and strict fulfillment of the confidential order of August 5, 1872, concerning the remission to Madrid of full and detailed statistical data.

God guard you excellency many years.

MADRID, *March 24, 1873.*

SORNI.

To the SUPERIOR CIVIL GOVERNOR OF THE ISLAND OF CUBA.

A true copy.

No. 403.

Mr. Fish to General Sickles.

No. 327.]

DEPARTMENT OF STATE,

Washington, April 30, 1873.

SIR: Your No. 569, relating to the liberation of a large number of persons held in slavery in Cuba contrary to the act of July 4, 1870, and inclosing a note from Mr. Castelar on this subject, has been read with the greatest interest.

You will express to Mr. Castelar the satisfaction with which the President has witnessed this noble step in the direction of freedom, personal liberty, and universal justice, toward which, under the wise counsels which now direct her destinies, Spain is steadily marching. Ten thousand chains struck from human limbs, ten thousand chattels made men—ten thousand souls told that they need not wait for the grave to set them free; this is a noble record.

The speech of Mr. Castelar, to which you invite attention, had already attracted my notice. Slavery is, as he justly says, an international question. The rapid increase of the means of communication throughout the globe have brought into almost daily intercourse communities which have hitherto been aliens and strangers to each other, so that now no great social and moral wrong can be inflicted on any people without being felt throughout the civilized globe. All powers interested in the advancement and happiness of the human race, and the spread of peaceful and Christian influences, are watching the noble efforts of Spain to disembarass herself of the institution of human slavery.

I am, &c.,

HAMILTON FISH.

No. 404.

General Sickles to Mr. Fish.

[Extract.]

No. 592.]

UNITED STATES LEGATION IN SPAIN,

Madrid, May 10, 1873. (Rec'd May 31.)

SIR: I have the honor to report that on Saturday, the 3d instant, President Figueras received me in public audience. His excellency was

attended by the ministers of state, of the colonies, of war, of the navy, and of grace and justice.

Introduced by Mr. Millan y Caro, the principal official of the department of state, I read the following speech, (in Spanish.)

* * * * *

The English version of my remarks will be found in Appendix A.

His excellency the President replied as follows :

[Translation.]

SEÑOR MINISTER :

In the midst of the difficulties which ever attend a transition from one form of government to another, encouragement and support are found in the good wishes of nations as devoted to liberty as yours, and in the declarations of such illustrious bodies as your Senate and your House of Representatives, the exponents of a great and glorious democracy strong in the enjoyment of rights that elevate human nature, and in the fulfillment of those duties that assure the stability of the social structure.

Both those bodies, ripe in their republican experience, in addressing their felicitations and congratulations to our newly-founded republic, comprehended that this form of government has arisen among us, not by chance or any sudden impulse, but as the necessary result of the liberal movement that began with the present century ; a movement not inaugurated to satisfy the vanity of a few men, or to satiate the hunger of political parties, but to put an end to the constant struggle between tradition and right, calling communities to the exercise of a sovereignty which at once stimulates progress by the force of ideas, and maintains stability by obedience to law, and by respect for legitimate interests.

An evident proof that this spirit guides our republic you find in this very reform, whereby slavery is abolished in Porto Rico, a reform that reconciles at the same moment the abstract principles of justice with the difficulties often inseparable from their practical realization. By this standard and by this example our valiant and prudent nation will doubtless be guided in completing the work it has begun, so that in the bosom of our republic, and wherever our banner waves, there shall be none but free citizens.

And you, Señor Minister, who in your high discernment already know us so well, and so sincerely esteem our country, I beg you to convey to the American people, to their Congress, and to their illustrious President, the gratitude that fills us when we see that a nation which has firmly established republican institutions deems us fit to realize among ourselves the work of Washington and the work of Lincoln, which will go down to posterity as superhuman achievements in the history of liberty.

We shall persevere in the endeavor to justify this high appreciation, which we owe not only to the virtues of our new institutions, so liberal and so humanitarian, but also to the character of the Spanish people, so tenacious of their autonomy and their independence.

And with our traditional zeal the Spanish people will know how to carry across the seas to the Antilles in the nineteenth century the ripe fruits of civilization, as in the fifteenth century we carried thither its germs.

Those islands are an integral part of the republic—an integral part of the nation.

The republic desires to see all its citizens in the enjoyment of all their rights, and at the same time it will maintain intact the integrity of the national domain ; and to attain these great ends it will spare no sacrifice.

Your people and your Government see this clearly. In those days when your war, so admirably ended by the fall of Richmond, rent the American people in twain, we on the shores of the Old World ardently hoped and prayed that the United States, that living example of liberty and democracy, might not be lessened or eclipsed in any atom of its strength.

The American nation doubtless now has a like interest in that the national domain shall not be impaired in our hands.

The utterances of that great people, repeated in your most eloquent discourse, assure us that you desire to see the Spanish nation strong in its unity, and resolved to found in its European and American dominions the three great elements of progress—liberty, democracy, and the republic.

* * * * *

The ceremony concluded, I accompanied the President and cabinet to the private apartments of the executive mansion, where half an hour was passed in a general conversation, begun by Mr. Figueras, in relation to the results of emancipation in the United States, and the probable effects of such a measure in Cuba. The views expressed by the Presi-

dent were in the main a repetition of the observations of Mr. Castelar heretofore reported in my dispatches. It is perhaps worth remark that on this occasion the President and four members of the cabinet confirmed the assurance, before given me by the minister of state, of the purpose of this government to present to the Cortes a scheme of complete emancipation for Cuba.

I may also add that I took occasion to point out to the President and cabinet the advantage the republic would derive in filling up the civil and military offices in Cuba with persons sincerely disposed to carry out the views and obey the orders of the home government; that the success of emancipation depended, in a large measure, on a good understanding between the authors of the measure and the freedmen; that the authorities in Cuba were notoriously hostile to emancipation; that if retained in office they would execute the measure in the interest of a few and not of the many, and disaster would follow; that the success of our free black labor in America was greatly facilitated by the confidence established between the freedmen and the General Government through the friendly civil and military agents intrusted by the Government with the direction of affairs in the Southern States immediately after the war; and that if the same generous policy were adopted in Cuba the colored population might become not only the most industrious and productive but the most loyal Spanish element in the island. These suggestions were re-enforced by several examples, and seemed to make a favorable impression on President Figueras and his colleagues.

As I was about to take leave Mr. Castelar said he would call on me on the following Monday in relation to a very interesting subject, which I must reserve for a confidential dispatch.

I have appended extracts from several leading Madrid journals of various political affinities commenting on the reception, the proceedings of Congress, and the speeches pronounced. You will observe that I took occasion to invite a public declaration of the determination of this government, repeatedly intimated to me in private, to extend free institutions to its American possessions.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

Presentation of the joint resolutions of Congress to the Spanish executive.—Speech of General Sickles, May 3, 1873.

SEÑOR PRESIDENTE: I have the honor, in obedience to the commands of the President of the United States, to place in the hands of your excellency duly authenticated copies of certain resolutions recently adopted by the American Congress.

On the third day of March last the Senate and House of Representatives of the United States offered in the name of the American people the congratulations of Congress to the people of Spain upon the establishment of a republican form of government. In communicating to your excellency this joint resolution of Congress, approved by the President of the United States, I am fortunate in having the privilege of felicitating your excellency upon the success of your measures and the favor enjoyed by your wise administration.

And on the twenty-fifth day of March last the Senate of the United States, at a special session thereof, adopted certain other resolutions expressing the satisfaction with which that body had received intelligence of the act of this government abolishing slavery in the island of Porto Rico, thereby giving fresh proof that in its desire for republican institutions this country is animated by a generous love of liberty and a just respect for the natural rights of all men.

The United States, desiring only the happiness of those neighboring communities with which they have intimate relations and intercourse, cannot be indifferent to

whatever concerns the welfare of the Antilles. In abolishing slavery and caste, the Spanish Republic provides the surest guarantees for the pacification and loyalty of its American provinces.

Enjoying free institutions, their allegiance happily reconciled with liberty, Cuba and Porto Rico will contribute more than ever to the power of Spain, and they will find in the justice, permanence, and strength of the republic of which they form a part the best assurances of their tranquillity and prosperity.

[Appendix B.]

Extracts from sundry Madrid journals, having reference to the presentation of the congratulations of the United States Congress to the Government of the Spanish Republic, May 3, 1873.

[1. From *El Imparcial*, (Radical,) May 4, 1873.]

The lack of space prevents us from reproducing in full the speeches made yesterday at the reception of General Sickles.

We cannot, however, refrain from publishing the most important paragraph in the speech of the minister of the United States, in which the complete assimilation of the transatlantic provinces is asked for without any disguise.

This paragraph is as follows:

"Enjoying free institutions, their allegiance happily reconciled with liberty, Cuba and Porto Rico will contribute more than ever to the power of Spain, and they will find in the justice, permanence, and strength of the republic of which they form a part the best assurances of their tranquillity and prosperity."

It seems just for us also to copy the paragraphs in which the government of the republic replies to this insinuation:

"The republic desires to see all its citizens in the enjoyment of all their rights, and at the same time it will maintain intact the integrity of the national domain; and to attain these great ends it will spare no sacrifice.

"Your people and your Government see this clearly. In those days when your war, so admirably ended by the fall of Richmond, rent the American people in twain, we on the shores of the Old World ardently hoped and prayed that the United States, that living example of liberty and democracy, might not be lessened or eclipsed in any atom of its strength.

"The American nation doubtless now has a like interest in that the national domain shall not be impaired in our hands.

"The utterances of that great people, repeated in your most eloquent discourse, assure us that you desire to see the Spanish nation strong in its unity, and resolved to found in its European and American dominions the three great elements of progress—liberty, democracy, and the republic."

[2. From *La República Democrática*, (Radical opposition organ of Mr. Echegary,) May 4, 1873.]

Mr. Sickles, the representative of the United States, was yesterday received in solemn public audience, that he might deliver the congratulations of the Congress of his country to the Spanish government on the adoption of the new institutions and the passage of the bill for the abolition of slavery. The reception took place, as on the former occasion, when the same minister plenipotentiary announced the recognition of the Spanish Republic, in the elegant reception-room of the executive mansion. A company of engineers, with music and flag, did the honors, as usual, and the acting secretary of state, on account of the indisposition of Mr. Morayta, introduced Mr. Sickles. Both on the arrival and at the departure of the latter the band played an American march.

After his official reception he spent a few moments in friendly conversation with the ministers.

In his speech, in which he confined himself to stating the object for which he had been introduced, he remarked that the abolition of slavery gave evidence that our country was actuated by a genuine love of liberty and a just respect for the rights of man; that as Cuba and Porto Rico are bound to the United States by ties of extensive commercial relations, the fate of those islands cannot be regarded with indifference by them, and that he hoped that democratic institutions would increase the tranquillity and happiness of those islands, which form an integral part of the Spanish nation.

Mr. Figueras, in his reply, was very outspoken, and made it evident that the government is fully determined to spare no sacrifice to maintain the prosperity and happiness of our transatlantic provinces.

[3. From *La Igualdad*, (Federal Republican,) May 4.]

Yesterday, at the executive palace, took place the solemn and highly important act of the reception of the minister of the United States, General Sickles, who had been commissioned by the President of that powerful and prosperous republic to transmit to the President the message which the North American Senate and House of Representatives, in the name of the American people, had resolved to address to the people of Spain on the establishment of the republic.

The noble and lofty attitude assumed by the North American people toward Spain is of immense importance to our country; and this message from the Congress of a nation which has become, if not the first, at least one of the most enlightened and powerful nations of the world, in view of its spontaneity and elevated character, may well cause us to feel flattered as Spaniards and as republicans, and the present government to feel a just pride, in that it, by its wise policy, has succeeded in a very short space of time in dispelling fatal prejudices to which most serious errors, in times past, gave rise, and in gaining the sympathy, consideration, and moral support, both of the people and of the government of the American continent.

Monarchical Europe, surprised at the birth of the Spanish Republic, appears somewhat suspicious, and keeps aloof from us; not that we have given any reason for fears on her part, for never did a government give friendly powers greater proofs of loyalty, and of an ardent desire to live in peace and harmony with all nations, than have been given by the eminent Castelar in his memorandum, in his brilliant speeches and most eloquent declarations; but the nations of America, of that virgin land which is called to exercise a powerful influence over the destinies of mankind and the progress of civilization, do us justice in sending us a paternal embrace, which we return in token of our eternal gratitude.

The governments of Europe, also, will cease to entertain their groundless prejudices as soon as they become convinced, as the people whom they represent already are, that the republic which we have proclaimed, far from being a source of discord or perturbation, is a pledge of peace, order, and happiness at home, and of fraternity and concord with all nations.

We will not close this article without calling the attention of our readers to the frank and loyal declarations made in his speech of yesterday by the worthy representative of the United States in favor of the integrity of the Spanish nation, and of the close, solid, and durable union of Cuba and Porto Rico to the mother country. These declarations, with which the upright policy of the North American Government is in full accord, have put an end at once and forever to all the calumnies, falsehoods, and perfidious innuendoes whereby the reactionists kept no small part of the population in continual alarm, inasmuch as this class was ready to believe reports of the most absurd character, fully believing, perhaps, that our country was in danger, and that the loss of our beloved Antilles was imminent.

From this day forward they will not even have a pretext for imposing upon the good faith of honest people. The integrity of our country can be exposed to no danger so long as it has the republic for its shield, and the proverbial bravery of all Spaniards for its bulwark.

After reading his speech, and listening to the President's reply, Mr. Sickles cordially shook hands with the ministers who were present, and thus this most important ceremony terminated.

[4. From *La Epoca*, (Alphonsist,) May 4, 1873.]

In the relations of the Spanish nation with foreign powers everything seems very proper to us that indicates respect for our sovereign decisions, and recognition of whatever Spain in the exercise of her sovereignty may see fit to decree in matters relating to her domestic affairs. Applause and approval, however, of concrete acts of the powers that be should be received with distrust, because those who applaud exercise the attribute of the critic and the judge, and, by criticising and judging, reserve to themselves, in a manner, the right of censuring whenever they may think censure called for rather than praise.

Mr. Castelar had told us that, in the question of the abolition of slavery, it was necessary to tolerate the expression, on the part of the United States, of their opinion and some suggestions, because this question is one of an international and humanitarian character. The opinions and suggestions now, however, refer not only to the question of slavery, but also to the form of government which is to exist in Spain, as is seen by the documents which the Gazette publishes to-day, and which we publish in another column, giving an account of the message presented by the representative of the United States to our government, and of the reply of the latter. Is the question of the establishment of the republic in Spain also humanitarian and international? Have foreign powers a voice and vote in this also? Are they not all prepared to receive the sovereign decisions of the Spanish people with respect?

Although not one of the monarchies of Europe, nor the French Republic, has

recognized the recent political change in our country, the proper course for our government to pursue is to assume no character in presence of foreigners other than that of the representative of the Spanish nation, separating such character entirely from that of any political party, which in foreign relations can be easily done.

However, we find no fault with the executive on account of the diplomatic ceremony of yesterday. In fact, it was not possible for him not to receive the congratulations sent him by the Senate and Congress of the United States. We are, moreover, happy to see that the language of his reply was decidedly patriotic.

The American Senate, in its session of March 25, resolved to inform Spain with what pleasure it has seen the colored population of Porto Rico raised to the rights and privileges of Spanish citizens. It is seen that in the United States the same height of puritanism has not yet been reached as in Spain as regards autonomy, individual sovereignty, and the absolute right of each citizen; for we see that they still speak there admiringly of the acquisition of privileges, a word which no political man in our free and democratic Spain would dare to utter or to write.

The speech delivered by the representative of the United States at Madrid embraces not a few more points than the resolutions adopted by the Senate and Congress at Washington. Those bodies confined themselves to congratulating themselves and congratulating Spain on the establishment of the republic and the passage of the law for the abolition of slavery in Porto Rico. General Sickles goes much further. He decides at once a question which, to us Spaniards, appears very difficult, viz: What are the political opinions of our people during the present moments of confusion and anarchy? For him it is a settled thing that our country is anxious above everything for republican institutions. He speaks not only of Porto Rico, as do the legislative bodies at Washington, but of the two Spanish Antilles. And although he concludes his speech by acknowledging Cuba and Porto Rico as forming an integral part of the Spanish republic, he does so after forming his opinion concerning the guarantees which he thinks he finds in democratic institutions.

As this is rain falling on wet ground, as no Spaniard who loves his country has forgotten those diplomatic notes and that message of General Grant, in which the Anglo-American Government and its representative at Madrid counseled and urged the Spanish ministers to introduce such political reforms into Cuba as suited them, the language used yesterday by General Sickles seems to us worthy of study and of correction.

Mr. Castelar was doubtless of the same opinion when he drew up his reply, in which he reminds General Sickles, more than once, that the Spanish people is jealous of its autonomy and its independence; affirms that the republic desires the integrity of the national territory; resolutely declares that the United States, by reason of their own antecedents, must desire the Spanish nation to be preserved intact, and, with all clearness, alluding to the remark of Mr. Sickles that the two Antilles form a part of the republic, adds that they do, indeed, form a part of the republic, but also of our country. Everybody knows that it is within the bounds of possibility that our country may last longer than the present republic, in which case it is very necessary that it be henceforth understood that the speeches published in the Gazette of to-day will possess no value.

[5. From *La Politica*, (moderate,) May 5, 1873.]

On our first page our readers will find the speeches read on Saturday at the reception of the minister of the United States, which was held for the purpose of enabling him to present the resolutions adopted by the Senate and House of Representatives of the Union on the proclamation of a republic in Spain.

[The rest of this article is copied verbatim from the above article from the *Epoca*, beginning at the fifth paragraph with the words "The speech delivered by the representative of the United States at Madrid," and continuing to the end.]

[6. From *El Diario Español*, May 5, 1873, (conservative *Alfonsino*, edited by Ex-Governor Lopez Roberts, of Havana.)]

THE RECEPTION OF MR. SICKLES.

The proverb says that a drowning man will catch at a straw. Thus it is that in the diplomatic shipwreck which our country is suffering to-day the executive clutches the straw thrown out by Mr. Sickles. Having no one else to receive, because no European power has as yet recognized the Spanish Republic, he receives the representative of the United States. The latter avails himself of every occasion, and the government accepts any event with enthusiasm, so that the trumpets of fame may resound in honor of the hero of the feast.

Whenever an inhabitant of Madrid sees a company of soldiers, with music and flag, at the door of the presidential palace, he need not ask what it means. It is because the government is receiving Mr. Sickles. There is music because the United States

send congratulations on account of the triumph of the Spanish Republic; music because the United States recognize the new form of government; music because the United States applaud the abolition of slavery. And the coaches of the ministry come and go, and the ministers dress up in swallow-tailed coats and white cravats, and Mr. Sickles goes up and down the steps of the presidential mansion with the messages of his government.

Mean time the other ambassadors keep their own counsel and smack their lips at the discomfiture of our poor country, and European powers shrug their shoulders at the pretensions of our minister of state.

We see to-day in our diplomatic corps what we saw when the Soberano was the only vessel that we had. It was not necessary to mention its name. It was sufficient to say *the vessel*, and everybody knew what vessel was meant. So now, when any one says *the ambassador*, everybody understands that Mr. Sickles is meant, because the others are simply the *chargés d'affaires* of their respective countries, without being in any wise accredited to the government of the republic.

Thus it is that what one would expect to see divided among all is offered to Mr. Sickles alone, and the *solemn* receptions have consequently been repeated within a very short time.

The worst of the business is that when Mr. Grant, President of the republic of the United States, takes it into his head to address a few covert or open menaces (for they come of all kinds) to our government, in relation to Cuban affairs, we keep as mum as dead men, and do not *receive* Mr. Sickles, in order that he may send a report of our indifference or our energy to his chief.

Even in the speech so recently read by the representative of that republic, it is easy to see a desire to meddle with the affairs of Spain, as regards our transatlantic possessions, and all the acts and all the sayings of the Government of the United States go to show that, as far as those affairs are concerned, we live here under its guardianship. This is all that attracts our attention, and that leads us to think about the *cordial* relations between the two governments.

As to the rest, of what importance was it to us whether Mr. Grant approved or disapproved the proclamation of the Spanish Republic, or whether Mr. Sickles came and went as often as he chose, with music or without it, to the presidential mansion? This thing will gradually, by dint of repetition, assume the comic character of all the acts of the young republic, and will probably at last furnish a subject for the songs of the boys in the street.

This interference in our transatlantic affairs is now becoming a matter of history. The United States desire the independence of Cuba, and important documents exist, which accredit this fact, from the speeches and notes of President Grant to the dispatches and conversations of representative Sickles. If it were not for this desire, what interest would these gentlemen have in sending such enthusiastic congratulations, or why would they give occasion for the calling out of a company of soldiers every now and then to do the honors of a reception to the American representative? Certainly Mr. Grant and the other indirect protectors of filibusterism did not go into such ecstasies over the proclamation of the republic in France. What they care for is not that European nations should have this or that form of government, but that the peoples of America should obtain their independence, and they think that the shortest road to this is through the much desired *autonomy*, whereby those peoples will finally be separated from the mother-country.

Mr. Grant knows very well what he is about, and well does Mr. Sickles second his plans here. The government of the Spanish Republic, not being accustomed to having a word of sympathy addressed to it by other nations, is like a child with a new pair of shoes whenever the American ambassador informs it that he is going to present a congratulation or greeting from his Government. Our government slowly swallows the pill, which is sent to it coated over with half a dozen high-sounding phrases, and meanwhile the snow-ball is being prepared for *independence*, which is the mother of the lamb and the soul of the whole business.

At the very time when the recent reception of Mr. Sickles was being held, we received the sad news from Porto Rico which announced a rebellion that had fortunately been put down, but which may be but a prelude to more serious conflicts. While everything was being arranged here with congratulations and hand-shakings, there the good and loyal lovers of Spain saw the safety of the country threatened and public order disturbed. But what does Mr. Sickles or President Grant care for that?

Let the government have a little more *ambition* in matters relating to its diplomatic affairs, and let it try if it cannot get the ambassadors of France and England, Russia and Germany, and of the other great powers of Europe to recognize and congratulate it, for certain it is that so long as it shall be content with the receptions of Mr. Sickles we shall have made no great progress as regards the future of our country.

[7. From *La Discussion*, (republican ministerial,) May 6, 1873.]

The conservative newspapers are again talking about the intervention of the United States in our internal affairs, in view of the recent diplomatic act of Mr. Sickles, minister of the great republic. All appear indignant, and protest against the interference of the American cabinet. These are the same papers that speak with pleasure of a European intervention, "our plank of salvation." And they are ashamed that a friendly republic should advise us to abolish slavery and to maintain a republican form of government, and they do not hide their faces when they copy from *La Politica Europea* the false intelligence concerning intervention by the powers of Europe. Intervention for the purpose of crushing out liberty, *that* is great and does us honor; intervention for the purpose of giving us good advice, *that* brings dishonor upon us.

No. 405.

General Sickles to Mr. Fish.

No. 600.]

UNITED STATES LEGATION IN SPAIN.
Madrid, May 17, 1873. (Received June 5.)

SIR: The elections for the Cortes Constituyents began on Sunday last and ended on Tuesday evening, the 13th instant. Of the three hundred and eighty-five members chosen it is understood that five-sixths are federal republicans, and of these the great majority are supporters of the present administration. It is said that a few of the successful candidates aim at something more than the political reorganization of the country, and will advocate legislation upon several social questions. The result may be regarded as a signal triumph of the republican party. The vote polled is unexpectedly large. It appears that nearly two millions of electors have on this occasion exercised the right of suffrage, notwithstanding the announcement of all the monarchical organizations that they would take no part in the proceedings. Perfect order seems to have prevailed everywhere except in some of the northern provinces, where bands of Carlist insurgents continue to disturb the peace. Great efforts were made to induce the government to postpone the election. Impatient republicans, apprehensive that by some means they might lose the day, urged the immediate proclamation of a federal republic and the assumption of all necessary powers by the executive. The leaders of the old parties, and especially that which supported the late cabinet of Amadeus, proposed to convene the assembly, postpone the elections, and dismiss the executive. Several attempts were made by disaffected republicans to organize armed demonstrations for the purpose of constraining the government to accept the measures thus dictated, but the firm attitude of the authorities and the good sense of the people discouraged these movements, and they all miscarried. On the other hand, the committee appointed by the assembly, with authority to convene that body on any extraordinary occasion requiring legislative action, was the seat of a formidable conspiracy developed on the 23d ultimo, which had for its object to oust the executive by a *coup d'état*.

On that day the committee, comprising some thirty members, held a stated meeting in the palace of the Chamber of Deputies, which the President and cabinet were requested to attend for the purpose of a general discussion upon the condition of affairs. A body of some three thousand militia, well armed, assembled at the same hour in the bull-ring, say ten minutes' march from the place where the committee met. A strong detachment from this force was stationed near at hand on the other side of the street, in the palace of the Duke of Medina-Celi. These troops had

been organized under the late monarchy by the provincial and municipal authorities, which, with the exception of the governor, still held office and were supposed to be hostile to the republic. The provincial governor reported that he learned in explanation from the mayor of the city, that these battalions had been ordered to parade merely for review and inspection. General Carmona, commanding the militia, not having ordered the parade, repaired to the rendezvous and found the troops under the command of General Letona of the army, a royalist, who professed to be acting under the orders of Marshal Serrano. Lieutenant-General Contreras, by order of the president, proceeded with his aid-de-camp to the bull-ring and was fired upon from an outpost. The presiding officer of the committee, Mr. Francisco Salmeron, having requested the withdrawal of the guard of regular troops from the palace of the Cortes, explanations were asked by ministers respecting the unusual display of armed force which seemed to be acting in accord with the committee. The Marquis de Sardoal, who had formerly commanded the militia, replied that the committee had no information on the subject and were not responsible for any other than their own acts. The acting executive, Mr. Pi y Margall, sent a communication to his colleagues who were then in attendance on the committee, requesting their immediate presence at a cabinet council, adding, it is understood, an intimation that their persons were in danger from a meditated plan to seize the members of the government and substitute in their places authorities to be named by the committee. Mr. Castelar thereupon announced that ministers would withdraw, and requested the committee to adjourn until the next day. This was refused, but on motion of Mr. Rivero the body declared itself in permanent session, with the understanding that no action should be taken until ministers returned to the sitting.

The government instantly adopted active measures. The committee of the assembly was dissolved by an executive decree. The troops of the garrison were organized in several separate commands, to each of which was assigned an officer of rank and of well-known republican affinities. Among these chiefs were Lieutenant-General Milans del Bosch, Lieutenant-General Socias, and Major-General Hidalgo. The captain-general of Madrid, Pavia, taking offense at these dispositions, resigned, and was immediately succeeded by General Socias. Trusted troops were held in readiness to move at a moment's notice. A large force of republican volunteers was ordered out. Meanwhile a crowd had gathered outside the palace of the Cortes. The residence of Marshal Serrano, near the bull-ring, was thronged by visitors, among whom were officers of the army and navy and prominent royalists. The troops in the various barracks had been sounded in the hope that they would follow the lead of Serrano. It was expected that two battalions of engineers would pronounce in favor of that chief. The infantry, as an expedient to some end not obvious, had received permission to leave their quarters without arms, and were seen in all the streets freely mingling with the people. The artillery, under company officers recently raised from the ranks, were eager to prove their devotion to the republic.

It was now past 5 o'clock. I drove out to see the disposition of the forces, and not without an expectation of witnessing a conflict. The Puerta del Sol, the principal square of the capital, was filled with people. The ministry of the interior, on the south face of the quadrangle, seemed strongly held by troops. Patrols kept the way for any necessary movement. An aggressive-looking multitude occupied a part of the open space around the palace of the Cortes. Troops were quartered in the basement. Over the way the militia held the ducal palace. Pass-

ing the arch of Charles III, and approaching the main body of the insurgents stationed in the bull-ring, it was evident I was not regarded with friendly eyes. Proceeding along the Barrio Salamanca toward headquarters, which, it was understood, were established at the residence of Marshal Serrano, I met ex-Governor Albareda, a well-known adherent of Mr. Sagasta, on the way toward the rebel camp. In the grounds about Marshal Serrano's house were a number of people, several in uniform, but no troops nearer than the bull-ring, some two or three hundred yards distant. The streets, except in the localities I have named, were deserted. The houses were generally closed, here and there a woman looking out from an upper balcony. Flags were displayed from all the legations save ours, as I chose to await the outbreak of hostilities.

Supposing the government would take the initiative, and that its first step would be to seize Marshal Serrano's house and arrest the leaders assembled there, I remained some time in that vicinity on the Fuente Castellana, the usual drive toward evening. Observing two deputies approaching me rapidly, and learning from them that the artillery was about to open fire on the bull-ring, I yielded to their suggestions, and, following their example, returned to my quarters. Listening for the sound of cannon and hearing nothing, I was about to go to the palace of the Cortes when information reached me that General Hidalgo, having placed three batteries of artillery in position, well supported by republican volunteers, the main body of the rebel forces had surrendered and given up their arms. The battalions in the Medina-Celi palace, learning what had happened at the bull-ring, followed the example of their friends, and were disarmed.

The government had triumphed without a shot. The minister of war sent an officer with an order to Marshal Serrano to report in person to the ministry. The marshal promised to obey at once, but instantly took refuge in close concealment. Toward night it was rumored that the committee was still in session at the Cortes, and bent on mischief. This provoked the crowd outside the building to demand admission, which being refused by the servants in charge, the doors were forced, and the remaining deputies, among whom were Rivero, Becerra, Echegaray, Figuerola, and De Sardoal, would have been sacrificed to the fury of the mob if they had not found temporary hiding-places about the premises. Castelar and Nicolas Salmeron repaired promptly to the spot as soon as they were informed of what was happening, and, at great peril to themselves, succeeded, after many efforts, in rescuing their enemies from grave danger. The rest of the night passed tranquilly. The crisis was over. The government remained master of the situation. The news was telegraphed all over Spain, and the wires brought back the usual felicitations from all points of the compass. Nothing better illustrates the peculiar phases of Spanish politics, and, consequently, of Spanish character, than the singular circumstance that on the following day, and for several days after Castelar and his colleagues had heroically rescued the opposition leaders from imminent peril, detachments of troops were, by order of the authorities, hastily searching their houses and the residences of relatives and friends for these same persons. Like means were taken to find Marshal Serrano; and yet nothing was easier than his arrest during all the afternoon of the 23d. These domiciliary visits were continued until the whereabouts of the parties became well known, and then ceased. Rivero, who, it was understood, was to succeed Figueras as President, and name Serrano as minister of war, with the command of the forces, found refuge in the war department, in the private apartments of the minister, General Acosta, who, in turn, feeling embarrassed in having to prosecute old

friends in the army, resigned as soon as order was restored. Rivero, not feeling assured of the reception he might have at the hands of General Acosta's successor, changed his quarters. The Duke de la Torre, the Marquis de Sardoal, Martos, Echegaray, Sagasta, and others soon afterward got away disguised to France, the government furnishing some of them with passports under assumed names while maintaining a rigid surveillance on the roads to prevent the escape of persons compromised by the late events. There is only one phrase which can describe these traits of Spanish life, and that is naturally enough Castilian—"Son cosas de España."

You will expect some explanation of the circumstance that this conflict was provoked by the leaders of the assembly, who, on the 11th of February last, united in proclaiming a republican form of government, and in choosing the present executive. This requires a brief review of events. The first cabinet chosen by the assembly was composed of four radicals and four republicans. The radicals were believed to have accepted the republic from necessity rather than from conviction or choice; indeed, they said so frankly in the debates. The popular instinct, seldom wrong in such matters, at once detected danger in allowing half-way converts so large a share in the direction of affairs. Agitation for their removal immediately began to make headway. Figueras, Pi y Margall, Castelar, and Nicolas Salmeron soon saw that they must retire unless colleagues were given them out of the ranks of the old republican party. They intimated as much in private to the members of the assembly, and on the 25th of February, fourteen days after taking office, President Figueras and the cabinet resigned in a body.

It was now necessary for the radical leaders to choose between taking charge of a republican government without a republican constituency, or to yield the whole executive power to recognized republicans and content themselves with the means they held in the assembly to control the executive through the responsibility of ministers to parliament. The latter course was adopted and a homogeneous republican executive elected. In truth the majority of the assembly had, from the very night of the proclamation of the republic, found itself divided by a serious personal difficulty which had arisen between Rivero and Martos. Rivero resigned the presidency of the chamber, feeling that in the question between himself and his associates the sympathies of the house were with the latter. Martos was chosen to succeed him. These two men united controlled the assembly; divided, and Zorrilla, the recognized chief of the party, in voluntary exile, the majority was without a policy or a leader. The republicans, although never counting more than a fourth of the body, were nevertheless compact, earnest, and ably led. They pushed directly forward to their object, and gained it at once.

It was not long, however, before it became evident that whatever dissensions might exist in the assembly among the partisans respectively of Martos and Rivero, the loss of power had alienated the sympathies the radical party had at first shown toward the republican executive. An opposition was being organized that must soon prove fatal to President Figueras and his colleagues unless means could be found to check it. A cry came from the north for the dissolution of the assembly. Barcelona proclaimed the "federal republic." The ancient principality of Catalonia asserted its independence as a sovereign state. These movements were followed by popular demonstrations in Malaga, Cadiz, Valencia, Seville, and Saragossa. President Figueras hastened to Barcelona apparently for the purpose of using his great personal influence in his native province toward restraining an outbreak, which in-

deed afforded him the best weapons he could use in his contest, already imminent, with the assembly. He returned after a somewhat prolonged absence, having only partly succeeded in his supposed object, which was said to be that of bringing back Catalonia to her allegiance. The truth was he had checked a movement which had gained premature headway, and had managed to hold it in reserve to be let loose when it might curb the hostility of his enemies.

Returning to the capital, the President announced the next day his ultimatum to the astonished leaders of the majority: dissolution of the assembly, or the resignation of the republican executive. These bold demands were rejected with defiance by Martos, Echegaray, Becerra, Sardoal, and Figuerola. Rivero acquiesced in the attitude of his friends, but was silent. A bill providing for the dissolution of the assembly and the election of a Constituent Cortes was presented by a republican deputy. Figueras, in a brief speech, declared that the government made the passage of the bill a cabinet question. The house, divided into sections, according to Spanish custom, went into an election for members of a special committee to consider the bill. The royalist radicals carried eight committeemen and the government only one. The resignation of the executive was looked for as an immediate consequence. But it was soon seen that a master of parliamentary tactics, a statesman of no ordinary grasp, a leader of rare genius, shaped the policy of the republican party. The cabinet, to gain time, declared that it would abide the vote of the house on the bill when reported by the committee. Agitation all over the country was renewed. Catalonia became violent. The army in the north showed strong republican proclivities. The soldiers said they had been taken from their homes as conscripts to serve the King, and now that monarchy was at an end, they demanded to be discharged. Spain, without an army, was on the verge of dissolution. The committee deliberated a few days, and under party pressure brought in a bill prolonging the existence of the assembly, postponing the election of a Constituent Cortes, and denying the executive the means it asked for the conduct of the war against the Carlists. General Primo de Rivero presented a minority report, signed only by himself, favorable to the views of the government.

Madrid now felt the currents of popular passion concentrating on the capital from all parts of Spain. Large groups of resolute men were constantly seen about the Cortes. The president of the assembly, Martos, demanded a stronger guard for the chamber. Alarmed for his person, he slept in a private apartment within the building. The assembly hesitated to push matters to an encounter. Prudent members advised the leaders to come to an understanding with the government. A compromise was proposed: Castelar and three other republicans would be retained in the cabinet, but room must be made for the return of an equal number of radicals to office, with Rivero as chief executive, in place of Figueras. The truce was rejected as soon as offered. On the eighth of March the issue was decided. A vote was taken on the proposition to substitute the report of General de Rivero for that of the majority of the committee. Ramos Caldernn, a friend of Rivero's, who represented the balance of power in the assembly, announced, in the name of his absent chief and of his supporters, that they would sustain the minority report in favor of the government bill. This was decisive, and the motion was carried by a large majority.

Martos, in his turn, now resigned the presidency of the chamber, after a brief tenure of less than a month, and retired as well from the directing councils of his party. The power of the assembly was lost. Nobody

paid it reverence. Guerrilla attacks made every day by a few members, who arraigned the government on petty complaints, wearied sensible people, and soon brought the body into contempt. The republican leaders pressed their advantage, gave notice that they insisted on the immediate dispatch of pending business and a speedy adjournment. There were not wanting, however, certain elements in the assembly that clung tenaciously to the thought that while there is life there is hope. The republicans found an ally in an unexpected quarter. The opponents of the emancipation bill—the conservative group in the chamber and the whole conservative press in Madrid, organs of the “league”—unexpectedly joined in the cry for immediate adjournment. Anxious above all to perpetuate slavery in Cuba, they helped to remove the only obstacle in the way of revolution in Spain. Day after day they exclaimed, “Like Amadeo, the assembly has abdicated! It has neither moral nor political authority to legislate upon any subject. It is dead; let it bury itself!”

Figueras was not slow to see that the moment had come when he could deal a final blow. On the 25th of March he demanded the passage, that very day, of all the pending government bills, including that for the abolition of slavery in Porto Rico, to be followed by an immediate adjournment. Many deputies had left the capital. There was not much resistance, except so far as concerned the emancipation act. The majority, demoralized, divided, and alarmed, yielded everything. It was, however, supposed that the anti-slavery bill might be defeated by leaving the house without a quorum for the enactment of laws—a half, plus one, of the whole number of members. The indifference of the radicals aided the zeal of the conservatives, and it seemed likely the house would be counted out on a division being demanded. All sorts of appeals were made to the government not to press this bill. They were urged to conciliate Cuba and Porto Rico by concessions in the matter of their slave interests. They were warned not to excite Spanish jealousy, by inclining too much toward the policy of the United States. The bill was, indeed, regarded as lost. It was then that Castelar made his supreme effort. In a brilliant speech he boldly declared that the defeat of this measure would be followed in June by a general emancipation act, without indemnity, immediate and unconditional, extending to Cuba as well as Porto Rico. He affirmed that it was in vain to deny the international character the slavery question had acquired. He showed the impossibility of maintaining an institution already condemned by the civilized world. This act passed, he said, the question in Cuba might be dealt with dispassionately. Defeated, the government declined all responsibility for the consequences.

The conservatives saw the danger, held out a flag of truce, and asked a parley. A recess of an hour was granted. The conference had lasted three hours, and was not ended. Suspicions of bad faith were aroused, and the house, under the lead of the government, was about to vote. At length an agreement was announced, and the bill was passed unanimously, amid a scene of indescribable enthusiasm and joy. Thus closed the session of the assembly. Confidence, harmony, and good feeling seemed to have obliterated all trace of the controversies of the past month. The omens now were all favorable to the new republic. The assembly had dissolved. It had granted all the means the government needed. All parties had agreed on a settlement of the colonial question. The elections would take place in May. The Cortes Constituyentes would meet in June, and in that arena new parties and new ideas would contend for supremacy. Comparative repose followed the adjournment of

the assembly. The discipline of the army was re-established. Order was restored in Barcelona. The surface of politics in Madrid became tranquil. The emancipation act elicited kindly expressions of sympathy from abroad. The approaching election engaged the attention of parties at home. A prompt appeal to the nation afforded the best answer to those who hesitated to recognize the legitimacy of the government. Nevertheless, before many days had passed it was plain that the adjournment of the assembly was a truce and not peace. The old parties saw with dismay that republican opinions had taken a deeper hold of the people than was expected. When General Prim was asked why he did not establish a republic in 1868, he replied, "It would have been a republic without republicans." Now, when members of the assembly—who had proclaimed a republic and were not republicans themselves—solicited the suffrages of their districts as candidates for election to the Cortes they found their constituencies seeking representatives among those of pronounced and consistent republican antecedents.

It was discovered that power was passing from old hands to new. The republic proclaimed in an exigency by a monarchical assembly was not to be a phrase and form only. Indeed, unless checked, a revolution more formidable than Spain had ever seen was imminent. A cry of alarm, even of despair, went up from all old parties. They exclaimed: "The federal republic is death to the unity of Spain!" "Without the army order is impossible!" "The established church is in danger!" "The colonies are lost!" "Europe will combine to crush the republic, and our territory will be occupied by foreign armies!" Then began a warfare against the republican executive without a parallel in my observation of politics.

The purpose was to alarm everybody who had anything to lose. If a breach of the peace happened it was magnified into a riot. If a soldier was disobedient, the army was disbanding. If a shepherd in Estramadura lost a sheep, the flocks and the herds were being distributed by agrarian agents of the internationalists. If the authorities of Barcelona affirmed their adhesion to a federal form of government, the commune was proclaimed in the first commercial town in Spain. If the curate of Santa Cruz and his followers upset a railway-train and fired on helpless passengers, Don Carlos at the head of his forces was marching on Madrid. If an unknown traveler came to the capital and registered his name illegibly, Cluseret or Felix Pyatt was in Madrid. Many of the aristocracy fled from the country panic-stricken, propagating their fears and multiplying the fables which had inspired them. European and American journals sent their war correspondents to the capital to report battles which have not yet been fought. The public credit was impaired by rumors of repudiation. People were induced to hoard their money by reports that the government threatened a forced loan from the Bank of Spain. In the provinces it was said that Madrid was a prey to the mob. In Madrid we were told that the provinces were in hopeless anarchy.

The truth was, so far as my means of observation extended, and according to the official reports received from the various consulates, that more than usual tranquillity prevailed in the principle towns. And comparing the situation of affairs with that which I had seen at the capital under the monarchy, there was much less uneasiness and apprehension in social circles than was felt in the two years of the difficult reign of Amadeo.

To proceed with my narrative:

Among the last acts of the assembly was the appointment of a com-

mittee, or "*comision permanente*," in which all parties were represented, the royalists reserving to themselves the control and which had for its ostensible object a sort of surveillance over the government. The Cortes Constituyentes of 1869,-'70 had adopted a similar expedient, and the practice is followed by the present French assembly in the intervals of its sittings. These delegates of the legislature met and organized early in April, and it was soon plain enough that the ambitious schemes which had failed in the large and principal body, by reason of the impracticable elements of which the house was composed, were to be revived in the more convenient compass of a committee-room. The meetings, held once a week, were not public, deputies even, if not members of the commission, being excluded. The government designated a minister to attend the sittings. Castelar, Pi y Margall, and Sorni, each in turn, were present and answered the inquiries and criticisms which the Marquis de Sardoal, Figuerola, Echegaray, and Salaverria prepared for the occasion. Once or twice the contentions became so hot that Rivero interposed as a peace-maker.

The country was represented to be in a state of anarchy. It was said the army was disbanding; that the whole provinces disavowed the authority of the government; that houses and villages were sacked and estates divided by mobs claiming a common distribution of property; that the laws were nowhere executed; that public order and personal security had ceased to find guarantees in civil or military authority; that all Europe, except Switzerland, was hostile to the republic, and foreign intervention was imminent; that, under these circumstances, elections were impossible; that the proposed Cortes Constituyentes must be indefinitely postponed, and that the only salvation of the country was the immediate convocation of the old assembly. These declarations repeated at each meeting, re-echoed every day in all the opposition papers, were discussed and accepted in the political clubs by the adherents of the old *régime*. Even the pro-slavery organs, which, in their anxiety to avoid action on the emancipation bill, had denounced the assembly a month before as an obsolete encumbrance, now, seized with a deeper dread of a republican convention, joined in the appeal for the resurrection of the defunct assembly. Serrano, Rivero, Caballero de Rodas, Collantes, Martos, Sagasta, Becerra, Garcia Ruiz, and even the Carlists, seemed ready to join an alliance that might put an end by some means to the onward movement of the republican party directed with unlooked-for address and power.

Overestimating their own strength, the opposition radical leaders made the greater mistake of depreciating the courage, capacity, and resources of the men in power. Deceived by the apparent unanimity of the journals, it was believed public opinion would sustain any measure to supersede the rule of President Figueras. A conspiracy was planned. The name of Serrano, hitherto a tower of strength in the army, was expected to bring over the regular forces. So many leaders of parties combined in one enterprise must secure a large popular following. The sympathies of foreign governments would not be withheld, for already M. Theirs had indicated Marshal Serrano as the fittest man to be placed at the head of affairs in Spain. The "*comision permanente*" represented the sovereign assembly. It was an easy step to assume that, in behalf of interests so vast, the agent might assume the powers of the principal. It was unnecessary to wait for the assembly to meet. The committee of public safety could act and ask a bill of indemnity from the assembly when all was done. The committee met. President Figueras and all the cabinet were summoned to the sitting. The sudden

death of the estimable wife of the chief magistrate was announced, and the committee adjourned for twenty-four hours, exacting fresh guarantees for the attendance of all the government. By an order in council, Pi y Margall relieved Mr. Figueras temporarily in the executive office. The government, distrustful of the committee, was duly represented at the meeting on the following day, the 23d of April, but the acting president remained at his post in the ministry of the interior, and the secretary of war held the troops well in hand. Another revolution was imminent. It was expected the committee would depose the executive, appoint Rivero chief of the state, Serrano commander-in-chief of the army, suspend the elections, and convene the assembly. Serrano waited to hear from some battalions of the garrison. The committee waited for Serrano. The militia awaited the signal to occupy the palace of the Cortes and seize the ministers. The conspirators hesitated and lost the day. The rebel forces, disarmed by the promptness, energy, and strength of the government, their leaders all fled, and the capital was tranquil. Serrano, de Rodas, Martos, Figuerola, Becerra, all chiefs in the popular revolution of 1868, are at Bayonne. Topete surrendered himself, and is confined in the military prison of San Francisco, the Marquis de Sadoal is in Lisbon, Rivero in Madrid.

Appended to this dispatch you will find translations of several documents worth perusal, in their relation to the events I have described. Appendix A is the decree dissolving the permanent commission of the national assembly. Appendix C is the protest of fourteen members of that commission against the decree of dissolution. Appendix D is a narrative of the incidents of April 23, 1873, taken from the Official Gazette the day following. Appendix E is a proclamation by the executive to the electors of the nation, dated May 3, 1873.

In this imperfect sketch of one of those political enterprises, so common in this country that they are seldom described and soon forgotten, my purpose is to acquaint you with some of the difficulties the executive government has encountered in the brief period it has held office, and which may fairly excuse some of its shortcomings in dealing with questions you rightly presumed deserved more attention than they have received. The political horizon seems clear at this moment. It may, however, be anticipated, that in a period of transition, when so many privileges, interests, and traditions are menaced in this country, that no means will be left untried to defeat the reforms and the organic changes contemplated by the republican party. It is satisfactory to observe that these intrigues and combinations of party leaders are not regarded with sympathy by the people. Such plots and expedients belong to past epochs of Spanish history, and become every year more difficult and discreditable. The only ungovernable element in Spain is the old governing class. They never learned or practiced obedience to authority and law. The great mass of Spaniards are patient, decorous, respectful, and intelligent. They accept the good precepts and avoid the bad examples given them.

The two parties which show the most popular strength are the republicans and the Carlists. The latter took no part in the last two general elections of 1872 and 1873. They can always send fifty or sixty deputies to congress from Navarre, the Vascongardas, Catalonia, and Aragon. Nor is their power confined to the range of the Pyrenees. It is the real monarchical party of this country. It supports two journals of large circulation in this capital. A majority of the priests of the established church are Carlists. And if the cause of the pretender were ably directed and impersonated in an attractive prince, the triumph of the re-

public might be at least doubtful. As it is, more than thirty thousand troops are employed in active operations against the forces the *soi disant* Carlos VII has been able, with slender resources, to keep on foot for a year past.

The great mass of the people seem disposed to look forward with hope in the good sense and faith in the patriotism of the Cortes Constituyentes. The danger lies, in my judgment, in the probability that this body will bestow too much attention on mere forms, and not deal energetically with the real obstacles to the welfare of Spain. Parties rise in this country without any practical object, and they fall without having effected any substantial amelioration of the evils they profess to deprecate. Spain has seen a long succession of revolutions during the present century, and has made and unmade half a dozen constitutions. Yet whole provinces languish under the rubbish of the feudal system. Civil and ecclesiastical jurisdiction are still undefined. A traveler from France, having passed the custom-house inspection at the frontier, is again subject to provincial dues at Miranda. The young men of Castile are liable to conscription, while the Basque country has never recognized any liability to furnish a quota to the Spanish army. The national expenditures are double the amount of the public income. It is impossible to increase the revenue, and no minister is equal to the task of economy in appropriations. Spain has generals and admirals enough in commission to command all the armies and fleets in Europe. The roll of civil pen-

sions is as large as the army. The church establishment, supported by the state, is sufficient for three times the population. The colonial system is wasteful, corrupt, and arbitrary, advantageous only to favorites, and ruinous to the colonies. It remains to be seen whether the republicans, now for the first time in power, will be more fortunate than their predecessors in dealing with the situation, or whether, like the other parties, they will content themselves with giving new names to old abuses.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

PRESIDENCY OF THE EXECUTIVE POWER OF THE REPUBLIC.

Decree of April 24, 1873, dissolving the permanent commission of the national assembly.

The government of the republic:

Considering that the permanent commission of the Cortes has, by its course and by its tendencies, converted itself into an element of perturbation and disorder;

Considering that it has openly endeavored to indefinitely prolong the period of transition in which we are living, when the contrary is counseled by the interests of the republic and the country;

Considering that to this end it has sought, in contravention of the express provisions of a law passed by the assembly, to postpone the election of deputies to the constitutional convention;

Considering that it proposed to reconvoke the assembly for that purpose, when, far from the existence of circumstances which might have justified such action, the discipline of the army had signally improved, public order was well-nigh assured, and the bands of Don Carlos had just received staggering reverses;

Considering that by its unwarrantable purposes it contributed largely to provoke the conflict of yesterday, even setting aside the direct part taken therein by some of its members;

Considering that it attempted yesterday to appoint, by its own act, a commanding general of the citizen militia, thus usurping the attributes of the executive power;

Considering, lastly, that it has been a constant obstacle in the path of the government of the republic, against which it was continually plotting decrees:

Article I. The permanent commission of the assembly is hereby dissolved.

Article II. The government will, in due time, give account to the constitutional convention of its present action.

Madrid, April 24, 1873.

By the council of ministers.

The president *ad interim* of the executive powers,

FRANCISCO PI Y MARGALL.

[Appendix C.—Translation.]

Protest of fourteen members of the permanent commission of the national assembly against the decree of dissolution of April 24, 1873.

To the nation:

The undersigned, representatives of the nation, members of the permanent commission, constrained by motives of the highest patriotism to maintain a painful silence during the critical and exceptional days through which they have just passed, deem it an imperative duty of honor and dignity to declare before the nation:

First. That until the time arrives when the dispersed and persecuted members of the commission may assemble and take suitable action, the undersigned protest publicly and solemnly against the decree of the 24th of April last, dissolving the permanent commission named by the national assembly in the act of the 11th of March preceding.

Second. That they repel all the erroneous suppositions which have served as a pretext for such an unjust, violent, and unconstitutional proceeding.

Third. That, laying their hands upon their breasts and pledging their word of honor, they affirm that in all their acts they have confined themselves strictly within the limits of the charge imposed upon them by the assembly.

Fourth. That they have not for a single moment failed to show the executive power all the consideration and respect which the public powers owe to one another.

And lastly. That, individually and collectively, they reserve the right to exact full responsibility from the ministers of the executive power before the representation of the nation lawfully assembled, as well as the right to impeach before the bar of the justice of the nation the authors of the wrongful and scandalous outrage perpetrated on the night of the 23d of April.

Madrid, May 6, 1873.

THE MAQUIS OF SARDOAL.
LOUIS DE MOLINI.
JOSÉ ECHEGARAY.
LAUREANO FIGUEROLA.
JUAN MOMPEON.
PEDRO SALAVERRIA.
AGUSTIN ESTIBAN COLLANTES.
ANTONIO ROMERO ORTIZ.
NICHOLAS MARIA RIVERO.
SATURNINO VARGAS MACHUCA.
JOSÉ M. BERANGER.
TOMÁS M. MOSQUERA.
JUAN ULLOA.
CAYO LOPEZ.

[Appendix D.—Translation.]

General city news.

Yesterday the alcalde of Madrid, (Señor Marina,) under the pretext of reviewing the volunteers, ordered the battalions which existed during the reign of Amadeo of Savoy to form in the bull-ring. The news of this step filled the capital with alarm, and caused great excitement. As soon as the civil governor of the province heard of it he ordered the immediate convocation of the volunteer battalions recently organized under the decree issued by the government of the republic on the 14th of February last. Madrid, and especially its southern part, was soon bristling with bayonets.

At 2 o'clock the permanent commission of the Cortes met as announced, all the cabinet ministers being present except the home secretary, to whom the maintenance of public order had naturally been intrusted. Deliberation was in tranquil progress when fresh events compelled the government to withdraw before any decision had been reached.

The volunteers of the ancient republican party conceived the generous idea of approaching those in the bull-ring to see if they could not come to an understanding, and jointly place their arms at the service of the executive power.

When they reached the ring they soon realized the gravity of the situation. The volunteers inside were in a state of evident insurrection. They were led by General Letona, and in their ranks were several retired officers of different arms of the service. Brigadier Carmona, one of the members of the republican commission, in vain endeavored to harangue them; the unionista general (Letona) and many of his followers imposed silence upon them, and did not hesitate to utter cries of hostility to the government of the republic.

Convinced of the insurrectionary attitude of the volunteers in the bull-ring, the government met in council and took energetic steps to attack them. They met with the most decided support from all the forces of the garrison and the civil guard; and, thanks to the firm attitude of the regular troops and skillful disposition of the republican volunteers effected by General Carmona, who had been appointed commanding general of the militia, the insurgents yielded after a parley between several of their leaders and some of the republican volunteer officers in the treasury department building. They evacuated the bull-ring, abandoning their upstart leaders, but not without being for the most part disarmed by the battalions occupying the streets opening into the Prado.

Great zeal and love for the republic were shown in this conflict by the minister of war, (General Acosta,) whose orders were executed with decision and energy by Generals Socías, Contreras, Milans, Hidalgo, Pierrad, and Ferrer, and by Brigadier Arin, all of whom had at once offered their services to the government.

Notwithstanding all this, the commission of the Cortes remained in session to the great displeasure of the republican party, who regard it as having brought about this conflict by its marked tendency to create obstacles to the progress of the government and to prolong the interregnum, by postponing the elections for the constitutional convention and convoking, without due and reasonable motive, the assembly, whose sessions had to be suspended in order that the executive power might have more liberty of action, and devote itself to the maintenance of order and the salvation of the great interests of the republic and of the country.

The permanent commission had, in fact, become an element of perturbation, and so when the republican volunteers saw that even after the rising of yesterday was subdued the commission obstinately continued in its resolve to remain in session and convoke the assembly, a great feeling of indignation was aroused, from which the government succeeded in saving the commission with no slight effort.

Fortunately this grave crisis has been passed through without other casualties than those usually attending the confusion and tumult of even the slightest popular movement. Madrid is tranquil, although under arms, and anxious for the consolidation of the republic surrounded by so many difficulties and conspiracies. The government, for its part, is resolved to save it by dint of energy and the greatest sacrifices.

[Appendix E.—Translation.]

The executive power of the Spanish republic to the electors of the nation.

[From La Gaceta de Madrid, May 3, 1873.]

Any general electoral period is necessarily of great importance, since, in such a struggle, ideas are developed into laws, and the citizens of a state pronounce their judgment on its public powers. But, when the creation and not the criticism of a public power is involved; when radical innovations and not slow and steady progress are to be decided; when it is intended to change the form of the government itself from a fabric based upon privilege to one based upon right, the importance of an electoral period extends beyond the present time and influences all future time and all future generations.

The executive power would deem itself unworthy of its high mission and of the confidence bestowed upon it by the nation, if it did not now urge upon the electors the gravity of the issue in deciding the fate of the commonwealth, so grave, indeed, that if unreasoning counsels prevail the result may be an act of national suicide. In truth a national suicide, for, in full self-command, free in the expression of its ideas, free in the emission of its vote, without any kind of administrative or political pressure, without menace or constraint from any person whatever, if right, and, in fact, the sovereign arbitrator of its own lot, the Spanish nation, if it falls, can blame naught save its own incapacity laid bare before the world to-day and passing down to history without excuse or justification.

The admirable prudence of this nation, the proofs of wisdom shown in its passage from monarchy to democracy in 1868, and in its present completion of democracy in a republic, are a sure pledge that in the coming untrammelled electoral period, it will show the same calmness and judgment it has heretofore shown in eras of revolution. It pertains to the executive to assure the freedom of the ballot, in order that the result of the

elections may be not merely legitimate, but also a genuine moral expression of the popular will.

To coerce the will of the people is, at all times, a crime; but it is more than a crime, it is madness, for a republican government to do so. The word "republic," in its simplest sense, means the government of nations by themselves, and self-government springs from the ballot-box. To corrupt, vitiate, or falsify elections is the same as to corrupt, vitiate, or falsify the republic itself. From the moment the principle of popular sovereignty forms a practical element in our institutions—from the moment when all ideas have full liberty of expression by speech and pen, in order that, through universal suffrage, they may develop into laws, the rulers of the nation are limited to leaving the free expression of these ideas to the will of the people, assuring them full freedom and the good order indispensable to freedom of action.

The republican government is resolved to fulfill this duty, and trusts that all parties and all citizens will second it in this course, for otherwise we would but show that we are unfitted for self-government, and, if we showed this, we would also demonstrate the impossibility of the republic, and the judgment of the world would class us among the peoples whose liberty is irredeemably lost.

Even did morality and policy not counsel the government to the fullest electoral freedom, it would be counseled by the most rudimentary instinct of self-preservation.

This government is charged with guaranteeing against all attacks the sincerity of the vote which consecrates the republic in our country and organizes it upon bases as far removed from reaction as from utopianism. The day on which the National Assembly proclaimed the republic the assembly expressly covenanted to call upon the people to organize its work, and to perfect the chain of consequences flowing from the principle then proclaimed. According to the practice of all free nations, and according to the language of the laws themselves, when sovereignty resides with the people, to them it now belongs to define and extend without delay the decision of the assembly. Public opinion in Europe has recognized the need of a speedy appeal to the Spanish people in solemn convocation.

The assembly passed a law irrevocably fixing the time for such convocation, and therefore the government took action with a strong hand and a firm resolve against those who sought to retard the verdict of the nation and to convoke illegally the suspended assembly, ignoring alike the language of the constitution, the letter of the laws, and the sovereignty of the people. And the same energy it showed against those who in high places conspired to prevent the elections, will it also show against those who from below seek to disturb the elections and to set aside their sovereign verdict.

On its accession to the heights of power the government saw that the very roots of constitutional rule were withered in Spain by the falsification and corruption of the ballot. Councils of ministers designated their candidates as though they appointed office-holders; governors received their countersign and transmitted it to their underlings; the sacred mission of justice was converted into an electioneering agency; the budget became a means of bribery; the public administration became a weapon of attack, and the conduct of our elections reached so scandalous a height, and the art of electoral corruption became so deeply rooted, that these same notorious falsifiers of the ballot have themselves shrunk back, terrified, on beholding the dawn of a new era of truth and sincerity in the expression of the will of the people.

It is now necessary and indispensable to purify the electoral system, and the best means of purifying it is for office-holders to cease to regard their offices as a means of gaining votes, and for the governors especially to cease to regard their administration as a ministerial agency. In exact reverse of the belief hitherto cherished, and the practice hitherto followed, the task of the dependents of the government must henceforth be to assure freedom of expression to all ideas and freedom of vote to all citizens.

With these elections should forever end the system of official candidacies, of administrative support, of the conversion of public servants into agents of the government, of the threats of armed mobs, of hinderances in the polling-booths, of the arbitrary distribution of certificates of the right to vote, of false returns, and of the miraculous resurrection in the official canvass of candidates defeated at the polls.

Far from wishing to perpetuate this melancholy electoral tradition, the government desires that its agents shall extend the amplest protection to all voters, whatever may be their opinion or their banner. Far from rewarding those who influence, menace, bribe, or falsify the elections, the government is resolved to hunt them down untiringly, and to turn them over to the tribunals without delay. In democratic societies governments must not be the judges of the electors, but are to be judged by them. Never must they set themselves up as sovereigns of the national will, but should be humble and faithful in fulfilling the judgments of the ballot-box.

One of the social phenomena now to be seen unequivocally and with pain is that to-day, after all our declarations, those in opposition to the ideas of the government show signs of failing resolution, and refrain from taking part in the vote as though some grave peril threatened them or superior force constrained them. But the government does not and cannot believe the people of the republic capable of hindering in

any way the free exercise of the right to vote, knowing as it does that upon the exercise of this right depends the consolidation of the republic. Nor does the government believe, nor can it believe, that the difficulties of the present period of transition can in any way dismay the people of the nation that chose the Constituent Cortes of 1810 amidst the horrors of a foreign invasion, the Constituent Cortes of 1836 amidst the horrors of a civil war, and the two last constitutional conventions when surrounded by the tumult of armed and triumphant revolutions. The government witnesses with deep pain, and denounces with manly uprightness, the circumstance that the parties who most stand in need of full legality, now prefer disturbances in the elections, and are speedily disheartened in the electoral struggle if not protected by the shadow of the public administration. And thus it is that political parties are ever striving to direct the government of the state, and not the opinion of the people, passing from dictatorship to conspiracies, with no other polar star than their own interests, and no other goal than their own aggrandizement, even though these be won at the cost of justice and of right. And from hence springs another evil still more serious. The voters of the people, unconscious of their own high authority and sovereignty, await the signal of the government to vote for the candidate who may please and satisfy the administration.

While this evil lasts so long will last the two greatest calamities of our time—systematic insurrection and military *pronunciamientos*. Our sorely-rent social system will find no repose; and instead of hastening toward democratic institutions as a safe harbor of refuge, its forces will gather as to a field of battle. The government adjures all voters to repair to the polls, and there make known their will and their convictions. The government assures them that it will exert no manner of coercion either upon their voice or upon their conscience.

The government would rather that the diverse opinions should be represented in the chamber in the same proportion as they exist among the people.

If, from the calm heights where governments should ever dwell, far removed by their nature from all party contests, it were permitted to address the combatants, the government would direct counsel to those who have always striven to establish liberty and democracy in our country. And it would remind them that unreasoning abstention from the polls can alone give rise to reactionary conspiracies; and that reactionary conspiracies, if they prevail, which is impossible, can alone result in a dictatorship, which is the extinction of liberty, or in the restoration which would be the crowning shame of our country. The republic is now indissolubly joined to liberty. Its cause is the cause of progress. In saving the republic we save the rights of all. If the republic falls the right falls with it. The board whereat liberty may alone sit is the republic. And the liberal parties of the opposition will repent themselves, when too late, of their present errors: firstly, because they have sought to retard the vote of the people; and, secondly, because they have refused to contribute toward the better and more perfect organization of the republic.

But if in truth the government cannot address itself to any parties, it may and should address itself to the electors of the nation, and to them it now speaks. Assemble yourselves; calmly discuss, freely acquaint yourselves with all the problems that agitate modern society; choose the men whose purity of purpose and whose exalted patriotism inspires you with the most faith and confidence. You are masters of your convictions and of your vote; and if, from spite or fear, you do not cast your votes, blame no one for the consequences that may follow this act of moral suicide—blame only yourselves. The government confides in the prudence of the Spanish people; it confides in the calmness of its judgment, and it trusts that, heeding the dictates of their convictions and the voice of their conscience, they will be successful in giving form to the great principles of modern civilization, and through the triumph of these principles they may give strength to the rights of all and add to the greatness of our beloved country.

Madrid, May 3, 1870.

ESTANISLAO FIGUERAS,
President of the Executive Power.
EMILIO CASTELAR,
Minister of State.
NICOLÁS SALMERON,
Minister of Grace and Justice.
FERNANDO PIERRARD,
Minister of War, ad interim.
JACOBO OREYRO,
Minister of Marine.
JUAN TUTAN,
Minister of the Treasury.
FRANCISCO PI Y MARGALL,
Minister of the Interior.
EDUARDO CHAO,
Minister of Public Works.
JOSÉ CRISTOBAL SORNI,
Minister of the Colonies.

No. 406.

General Sickles to Mr. Fish.

[Extract.]

No. 604.]

UNITED STATES LEGATION IN SPAIN,
Madrid, May 26, 1873. (Received June 12.)

SIR: Soon after the receipt of your instruction No. 323 I had the honor to read it to the minister of state. His excellency expressed surprise and indignation on learning the manner in which the Cuban authorities had disobeyed the orders of the supreme government. Remarking that this was by no means the first instance of such disobedience, I informed Mr. Castelar of the action of the admiralty in 1870, in the case of the "Lloyd Aspinwall." I said that the military and naval authorities in Cuba had so long been permitted to disobey orders, disregard decrees, and suspend the laws of Spain, that they were becoming, practically, independent of the Madrid government, and that, unless speedily made to understand and perform their duty by means of one or more severe examples of punishment for misconduct, it would be useless to come here for the redress of any grievances citizens of the United States might suffer in Cuba.

The minister assured me that further and peremptory orders would be sent at once to Cuba, with reference to the several matters embraced in your note; that special instructions in the case of Santa Rosa and Kryké would be given by the navy department to the admiral commanding, and that if these orders should not be obeyed, the officer offending would be dismissed. Mr. Castelar proceeded to state that these irregularities were incident to the old colonial system bequeathed to the republic by the monarchy; that slavery was the basis of the situation in Cuba, and the exigencies of that institution were complicated by a state of war; that the administration had become demoralized by gross abuses which had escaped correction through the frequent changes of government in Spain; that the condition of affairs in the peninsula had tasked the utmost efforts of the republican executive during the brief period it had held office; that, nevertheless, measures were under consideration which could not fail to put an end to many of the evils of the old system; that these reforms, so far as they could be enforced by decrees, would be put in operation as soon as an executive government should be definitively constituted by the Cortes Constituyentes; and that others, such as an emancipation act, a general amnesty, and a prudent measure of self-government for Cuba, would be submitted to the Cortes for its approbation.

Promising to acquaint you with the observations of his excellency, I begged to be informed, as soon as possible, of the action of the Cuban authorities in response to the fresh orders about to be sent, remarking that I felt reluctant to send forward any other than a satisfactory communication on so important a subject.

Mr. Castelar said he was sure there would be no delay; that he would bring the business before the council of ministers that very afternoon; that the orders would be sent by cable, and he would inform me at once of the result.

On the 14th instant Mr. Castelar informed me in a private note, a translation of which is appended, that, on the day before, the secretary of the navy had telegraphed the necessary orders for the liberation of Santa Rosa and Kryké, and that, with respect to the embargoes, the colonial

minister felt sure there would be no delay after the receipt of his orders, which had been sent by post.

Under these circumstances, having sent you a brief report by telegraph of my action and of Mr. Castelar's reply, I deferred for a few days this regular communication.

I had before reminded the minister that I was still without information of the action of the Cuban authorities in these cases, to which his attention had been called in April. His excellency replied that he had received telegrams from the captain-general about the case of O'Kelly, and he believed that one of them related likewise to the case of Santa Rosa, which he would send me for perusal. Not hearing from the minister, I addressed an unofficial note to him repeating my request for the promised information. I inclose a translation of the reply received from Mr. Castelar on the 8th, and of General Pieltain's telegram of the 3d instant.

Having waited until Friday last, the 23d instant, and hearing nothing meanwhile from Mr. Castelar on this subject, I requested an interview, which was appointed for to-day.

His excellency anticipated the subject uppermost in my mind, and at once expressed his regret and surprise not to have received from his colleagues of the colonial and marine departments further advices with reference to the topics of our recent conferences.

* * * * *

He assured me of the solicitude and zeal he had shown in urging the prompt fulfillment of all that had been promised in these cases. He was indeed at a loss for a satisfactory explanation of the delay that had occurred. He would that very day ask the action of the council of ministers on the questions I had presented. I might rest satisfied he would leave nothing undone on his part, and he was sure he could say the same for his colleagues, that would put an end to a state of things not less unsatisfactory to this government than it must be to the President. His excellency seemed so fully convinced of the importance of prompt action that I made no further attempt to amplify the considerations pointing in that direction. It was, however, agreed between us that I should have a conversation with President Figueras on the subject.

The President gave me an interview this afternoon. I stated to him the circumstances, and remarked that I was unable to give you any sufficient explanation of the delay. His excellency replied with characteristic directness, "In Havana they do not obey the government in Madrid." He added, "We will consider the question to-day in council and take measures immediately to cause those men to be released. About the embargoes there can be no further difficulty. We shall stop all of them by a general measure which is ready to be published." I thanked the President for these satisfactory assurances, and after some further conversation, in course of which Mr. Figueras intimated his purpose to retire from office on the assembling of the Cortes Constituyentes next month, I took my leave of his excellency.

Unwilling to postpone any longer my report of the action taken in compliance with your instruction, I regret that it must be so inadequate, and can only hope that before this dispatch comes to your hands I may be able to anticipate its contents by a telegram conveying more satisfactory intelligence.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

Mr. Castelar to General Sickles.

[Unofficial.]

MINISTRY OF STATE, PRIVATE OFFICE,
Madrid, May 8, 1873. (Received May 8.)

MY DEAR FRIEND: The inclosed is a copy of a telegram from Havana which I wish I could have shown you in person so that we could speak of matters of much interest to me and which will also interest you. However, I will go to see you at my usual hour. I have again telegraphed for the promised information about Santa Rosa.

I remain, &c.,

EMILIO CASTELAR.

Appendix referred to in the foregoing note.—Translation.

[Telegram.]

HAVANA, *May 3, 5 p. m. (Received May 4, 11 a. m.)*

To the MINISTER OF STATE:

O'Kelly comes to Havana under full guarantees. All consideration shown him. His case not forejudged. Will be brought before ordinary tribunal. Information about Santa Rosa another day.

PIELTAIN.

[Appendix B.—Translation.]*Mr. Castelar to General Sickles. (Private.)*MINISTRY OF STATE, PRIVATE OFFICE,
Madrid, May 14, 1873. (Received May 4.)

MY DEAR FRIEND: Yesterday the minister of marine sent the necessary telegram ordering the release of the American citizens pardoned by the government of the Metropolis.

I spoke to the minister of ultramar about the embargoes, and he told me that if the orders issued for the release of embargoed property have not been executed he is sure it is because they have not yet been received.

I remain, &c.,

EMILIO CASTELAR.

No. 407.*General Sickles to Mr. Fish.*

No. 610.]

UNITED STATES LEGATION,
Madrid, June 1, 1873. (Received June 20.)

SIR: I have the honor to forward herewith a copy of the papers prepared in obedience to your instruction No. 309, in relation to the grievances imposed on foreign shipping by the customs regulations in Cuba. On pages* 46-52 of the printed case will be found a draft of a proposed note to the Spanish government. These papers have been transmitted, in duplicate, to the representatives of Great Britain, Germany, and Sweden residing at this capital, accompanied by a note—*mutatis mutandis*—corresponding to the copy annexed.

I am, &c.,

D. E. SICKLES.

* See pages 995-999 of this print.

[Appendix 1.]

*General Sickles to Mr. Layard.*LEGATION OF THE UNITED STATES OF AMERICA,
Madrid, June 1, 1873.

SIR: I have the honor to transmit to your excellency, in obedience to instructions from my Government, three copies of sundry papers touching the customs regulations in Cuba in their relation to foreign vessels engaged in commerce with that island. It is presumed that the trade carried on in British ships with Cuban ports may have given occasion for reclamations on the part of your government like those it has been my duty to present. The representations heretofore made by the United States having been only partially successful in obtaining the ameliorations desired, I am directed to persevere in further efforts to this end, and especially to invite simultaneous and, as far as possible, identical action on the part on the government of Great Britain.

My Government directs me to confer likewise with the representatives of Germany and Sweden at this capital, in the hope that they also may receive instructions enabling each to frame a note on this subject, to be addressed separately and at the same time to the Spanish minister of foreign affairs.

On page 46 of the inclosure will be found a draught of a proposed note to the Spanish government, which I shall be happy to amend so as to meet your views, in order that the proposed action may, if deemed expedient, be identical.

I avail, &c.,

D. E. SICKLES.

[Here follows instruction to General Sickles of March 21, for which see page 932.]

Additional papers.

1. New regulations of December 26, 1872. English translation.
2. New regulations of December 26, 1872. Spanish original text.
3. Mr. Martos to General Sickles. Note dated January 2, 1873.
4. General Sickles to Mr. Martos. Note dated January 27, 1873.
5. Mr. Castelar to General Sickles. Note dated May 16, 1873.
6. Draft of proposed note to the minister of state.

Nos. 1 and 2.—New regulations of December 26, 1872. English translation and Spanish text.

[From La Gaceta de Madrid, December 29, 1872.—English translation.]

COLONIAL OFFICE.

YOUR EXCELLENCY: In consideration of the representations made by the general superintendent of the treasury in the island of Cuba, respecting the inconveniences found in the practical working of the regulations at present in force for the guidance of the captains and supercargoes of vessels engaged in commerce between foreign ports and those of the islands of Cuba and Porto Rico, and the expediency of limiting the privileges enjoyed by mail-steamers, and to re-establish, in all their vigor, the provisions affecting other steamers, principally employed in the transportation of articles of commerce, the King (whom may God save) has been pleased to order that the regulations in question should be drawn up in the form exhibited in the accompanying document, and that, as thus modified, they shall go into operation thirty days after their publication by the consuls and vice-consuls of Spain in the official newspapers of their respective districts; to which end His Majesty charges me to indicate to you, as by his royal order I now do, the necessity of notifying the said functionaries, through the ministry under your worthy charge, that they shall, as soon as possible, cause the accompanying regulations to be published in the said newspapers, and to see that they are frequently reproduced, and also that they shall communicate to the general superintendent of the treasury in Cuba and the chief financial officer of Porto Rico the date of their publication.

May God guard Your Excellency many years.

Madrid, December 26, 1872.

TOMAS MARIA MOSQUERA.

To the MINISTER OF STATE.

Rules to be observed by the captains and supercargoes of Spanish vessels, or those of other nations engaged in the carrying trade from foreign ports to those of the islands of Cuba and Porto Rico.

I. Captains of vessels sailing from foreign ports to those of the islands of Cuba and Porto Rico shall present to the Spanish consul or vice-consul a duplicate statement, without any corrections whatever, which shall declare :

1. The class, (or rig,) flag, and name of the vessel and its exact measurement, in Spanish tons. In the first voyage made by each vessel to the said islands, declaration shall be made of the number of tons it measures, by builder's measurement, even though they be not Spanish tons; and in the subsequent voyages, a certificate of the tonnage measurement made at the first port of entry, by order of the custom-house authorities for the payment of tonnage-dues, must be exhibited;

2. The name of the captain or master of the vessel;

3. The port or ports from whence it has sailed;

4. The names of the shippers, and those of the owners or consignees to whom the cargo is consigned;

5. The packages, bales, casks, barrels, cases, and other bundles or packages, with their respective marks and numbers, expressing in numbers and in writing the quantity of each class thereof;

6. The specific kind of merchandise or goods contained in the parcels, and their gross weight. The words *merchandise*, *victuals*, *provisions*, or others of like vagueness, will not be allowed to determine the specific kind of merchandise;

7. A similar statement of all cargo in bond, or in transit (to other ports;)

8. And the statement shall conclude by a distinct declaration that the vessel carries no other merchandise.

II. If all or part of the cargo consists of iron in bars or plates, metal in pigs or ingots, lumber, jerked beef, salt, cocoa, or other articles in bulk, they must be declared according to their kind, in decimal weight or measure, in the duplicate statement already mentioned.

III. These statements (*sobordos*) shall be certified by the Spanish consul or vice-consul, who will deliver one of the copies to the captain of the vessel, retaining the other, which he shall himself remit directly to the intendente-general of the island whither the ship is bound, so that it may serve as a voucher for the examination of the cargo by the customs authorities of the port of entry.

IV. The captain, at the end of the voyage, must note down in the copy of the statement which he is to retain the following particulars:

1. Whatever goods the crew may take with them, not already declared in said document, up to the value of 200 escudos (100 dollars) for each individual;

2. Such articles of food for the voyage as may remain unconsumed; and,

3. All munitions of war and spare materials, as also the quantity of coal carried for the consumption of the vessel if it be a steamer.

V. The captain, on arrival at his port of destination and when the sanitary inspections takes place, shall deliver the statement certified by the consul, and the general manifest of the cargo, to the chief of the custom-house officers or of the revenue guard.

VI. If a vessel sail in ballast, the captain shall present to the consul or vice-consul a note, (or statement,) in duplicate, declaring the fact, and the same forms will be observed as prescribed for the *sobordo*; that is to say, the consul will certify both documents, delivering one copy to the captain, and retaining the other to forward to the intendente of the island to which the ship is bound.

VII. If the captain or supercargo do not show the statement, or note declaring that the vessel sails in ballast, when the vessel is boarded, which act shall take place the moment it drops its anchor in the port of its destination, they shall be held liable to a fine of 400 escudos (200 dollars) for the want of that document; if the consular certificate or attestation do not appear thereon, he (or they) shall pay a fine of 200 escudos (100 dollars) for the absence of that formality; and, if it do not contain the particulars specified in Rule I, he (or they) shall pay a fine of 50 escudos (25 dollars) for each one omitted or inaccurately stated, but in the latter case the sum total of such fines shall not exceed 400 escudos (200 dollars.) In like manner, the captain or supercargo who shall not produce the *sobordo* and manifest when required to do so by the chief officer of the revenue guard, or whoever represents him, at the moment of boarding the vessels, shall incur a fine of 1,000 escudos (500 dollars,) unless an accident at sea shall have forced the vessel to put hastily into port, which fact shall be shown by means of a summary proceeding.

VIII. In case any correction or alteration should be observed in said documents, the captains or masters shall be held liable to appear before the competent tribunal to answer the charge of forgery, incurring an equal responsibility whether the vessel arrive in ballast or with cargo.

IX. The production of the *sobordo* is obligatory, and shall take place in all the ports, bays, and harbors of the island in which the vessel may anchor, even when in distress, the collector of customs retaining a copy and returning the original to the captain, in order that he may deliver it at the port of his destination.

X. Vessels of the coast-guard (revenue-cutters) may demand the *sobordo* from the captain or master within a distance of 23 kilometers (14.291 English miles) from the port of their destination.

XI. Captains are likewise under obligation to present to the Spanish consul or vice-

consul of the port of departure a memorandum of the approximate value of their cargo, to serve as data for the commercial statistics, with the preparation of which those functionaries are charged.

XII. The captain who shall not declare the exact burden of his vessel in Spanish tons, shall pay the expenses of its remeasurement if the excess prove to be more than 10 per cent.

XIII. Captains, who are forced by stress of weather or any other unforeseen event to throw a portion of the cargo overboard, shall also note it down in the manifest, stating even though it be in general terms, the quantities, parcels, and classes or kinds, (of the articles thrown overboard,) being obliged to make a corresponding declaration in their custom-house and to exhibit their log-book in confirmation of their assertions.

XIV. Passengers' luggage shall be presented for examination in the customs warehouse, and if articles of merchandise be found therein of a value not exceeding 200 escudos, (100 dollars,) the customs duties according to the tariff shall be assessed thereon, after comparison with the note or detailed statement which the interested parties are required to deliver to the collector of customs. If the value of such goods should exceed 200 escudos and not exceed 400, (200 dollars,) double duties shall be imposed; but if they amount to a larger sum they shall be liable to confiscation, unless in either case a declaration of the said goods shall have been previously made, when they shall only be subject to the payment of the duties fixed by the tariff.

XV. Any correction, addition, or alteration of the manifest or statement, or of the custom-house declarations, is absolutely prohibited, the discrepancies which may appear between the said documents being punishable in conformity to the regulations.

XVI. When the cargoes proceed from a port where there is no consul or vice-consul, and the residence of these agents is more than thirty kilometers (18.640 English miles) from the place of embarkation, the captains and supercargoes may be relieved from the formality of the *sobordos*, but in order to enjoy this exemption it is necessary that the cargoes shall be homogeneous and composed exactly and entirely of any one of the following articles: Hides, timber, (or lumber,) staves, dye-woods, mineral coal, or horns, provided that these articles are the product of the country from which the vessel comes; that the voyage is direct, and that the duties be assessed on the merchandise as a whole.

XVII. All packages omitted in the *sobordo*, or manifest of the cargo, shall be liable to the penalty of seizure, a fine being imposed, in addition, upon the captain to the amount of their value, provided that the amount of duties upon the goods therein contained shall not exceed 800 escudos (400 dollars;) but if the duties exceed this sum, and the articles belong to or are consigned to the owner, captain, or supercargo of the vessel, the fine will not be levied, and in its stead the vessel, with its freights and all other profits, shall be confiscated.

XVIII. If, after the vessel's cargo is discharged, one or more of the packages declared shall be found missing, without the invoice of their contents having been presented at the proper time, the captain or supercargo shall be deemed and taken to have committed fraud against the treasury, and shall be fined 400 escudos (200 dollars) for each one of the missing parcels.

XIX. If the owner or consignee of an article not declared by the captain should, within forty-eight hours, present the invoice of the said article to the custom-house, no charge will lie against him, and the goods shall be delivered up to him; but in such case the captain or supercargo shall be held liable to pay a fine equal to the full value of the articles or goods not manifested.

XX. Without a permit from the collector of customs and examination by the chief of the revenue-guard, nothing whatever can be landed. For the simple act of landing anything, although of little value, and even though it be free of duty, the captain or supercargo shall pay a fine of 2,000 escudos, (1,000 dollars,) and all the articles seized, as well as the boat or barge carrying them, shall be liable to confiscation; provided, that the duties the said articles would have had to pay shall not exceed 400 escudos, (200 dollars;) because, if they exceed this sum, the fine will not be levied, and the vessel shall be confiscated.

XXI. Neither may any articles be transferred from one vessel to another in harbor, in small or large quantities, without fulfilling the conditions required by the regulations; and in the contrary case the captains or supercargoes are liable to the penalties prescribed in these regulations.

XXII. If articles of great or little value be landed in a port other than a declared port of entry, the vessel bringing them shall be confiscated, with all her equipments.

XXIII. If the search, which must be undergone by all vessels before their clearance register can be issued, should show any excess of cargo, such excess shall be confiscated, imposing in addition a fine upon the captain equal to the value of said excess.

XXIV. The same confiscation and fine as that mentioned in the foregoing article shall be held to apply to all seizures made in consequence of fraudulent attempts to embark goods, fruits, or other effects.

XXV. If the captains or supercargoes have not wherewithal to satisfy the amounts.

to which they may be adjudged liable, the vessels under their command shall be made use of for payment of all penalties and costs, unless the consignees should voluntarily offer to satisfy them.

XXVI. The translation or dispatch of any manifest or *sobordo* shall not be undertaken until the captain or consignee shall have presented in the custom-house the corresponding bill of health.

XXVII. The captains or supercargoes of mail-steamers, under which denomination only those carrying the mail by commission from their government, and having fixed periodical days of departure from their respective ports, can be included, may carry up to 10 tons of cargo without requiring a consular certificate, being obliged, nevertheless, to present a manifest of the cargo in the time and form prescribed in these regulations.

XXVIII. If the cargo carried by the mail-steamers exceeds 10 tons, the presentation of the *sobordo*, registered by the consuls of Spain in the ports of departure, shall be obligatory; and in this case the captains or supercargoes may be permitted to declare up to 6 tons in addition, without requiring the consular certificate. If this figure be exceeded, the manifest shall be deemed and held not to have been presented, and the proceedings prescribed in the present regulations shall be enforced.

XXIX. The masters of fishing vessels or smacks coming from the neighboring coast and entering the ports of the Antilles laden with fish, or in ballast, are exempted from the presentation of consular certificates.

Madrid, December 26, 1872.

MOSQUERA.

[No. 3.—Note dated January 2, 1873.—Translation.]

Mr. Martos to General Sickles.

MINISTRY OF STATE,
Madrid, January 2, 1873.

SIR: I have the honor to inform you that, in order to diminish, so far as may be possible, the reclamations of foreign representatives growing out of the fines imposed by the customs authorities in the island of Cuba upon merchant-captains, the minister of ultramar has, under date of the 26th of December last, notified the general superintendent of the finances of the island of Cuba, (intendente-general de hacienda,) firstly, that no fine imposed by the customs authorities upon captains or supercargoes of national and foreign vessels for errors, omissions, or inaccuracies in the *sobordos* or manifests they present, shall take effect without the previous approval of the general superintendent, the administrators and treasurers of the several custom-houses being required to exact on their own responsibility a sufficient guarantee to protect the interests of the treasury, in case the vessels put to sea before the final payment of the fines which shall have been incurred by their captains or supercargoes; secondly, that within as brief a period as may be practicable, he shall propose such separation as can be made between the circumstances and details now required in the *sobordos*, leaving such as may be essential to the prevention of frauds subject to consular registry and certification, and exempting from such formality such as have no importance in a financial point of view; and, thirdly, that the fines imposed on the captains or supercargoes of vessels for errors in their papers, and subsequently revoked, as well as those condoned by the free act of the supreme government, shall be refunded within the fixed term of one year, counting from the date of the reception in the general superintendent's office of the order directing such restitution, or declaring the penalty to have been improvidently imposed.

I avail myself of this occasion to repeat to you, sir, the assurances of my most distinguished consideration.

CRISTINO MARTOS.

The MINISTER PLENIPOTENTIARY of the United States.

[No. 4.—Note dated January 27, 1873.]

General Sickles to Mr. Martos.

LEGATION OF THE UNITED STATES OF AMERICA,
Madrid, January 27, 1873.

SIR: I have the honor to acknowledge the receipt of the note addressed to me by your excellency under date of the 2d instant, by which I am informed—

1st. That fines on captains or supercargoes of vessels for errors, omissions, or inac-

curacies in their manifests and *sobordos* shall not take effect in Cuba without the approval of the intendente of the treasury;

2d. That the intendente shall point out without delay such of the present requirements respecting the contents of the *sobordo* as may be omitted without prejudice to the public service; and,

3d. That fines revoked by the authority imposing them, or remitted by the supreme government, shall be refunded within one year, counting from the date of the reception of the order of restitution.

My Government will learn with satisfaction that subordinate customs officers will not hereafter be allowed in their discretion to impose and collect fines from captains and supercargoes of foreign vessels in the Cuban ports. It is, however, much to be regretted that the restitution of fines wrongfully inflicted may be withheld from the injured parties twelve months after the authorities shall have received orders directing such re-imbursement.

My Government will likewise be gratified to know that steps are taken to simplify the regulations now in force, under which it is so difficult for captains of vessels, with the utmost rectitude of conduct and purpose, to escape the numerous penalties denounced for mere informalities in their papers.

Referring to the communication I had the honor to address to your excellency on this subject on the 27th of November last, and likewise to my note of July 16, 1870, I desire to renew the representations therein made respecting several of the regulations contained in the royal order of July 1, 1859, and which re-appear in the decree of December 26, 1872, published in the Gazette of Madrid on the 29th of the same month.

Some of the particulars required to be set forth in the *sobordo*, or statement in duplicate, are, it is respectfully urged, unnecessary as safeguards against frauds on the revenue, at variance with commercial usage, and tend, in their operation, to cause much inconvenience and loss to captains and owners of vessels. It is required, among many other specifications, that the *sobordo* shall show, 1. The "exact measurement of the vessel in Spanish tonnage." 2. A description of the specific kind of merchandise contained in every package, bale, case, bundle, or parcel in the cargo, and the quantity, decimal weight, or measure, and marks and numbers of each article. In addition to this detail called for in the duplicate *sobordo*, a manifest of the cargo is necessary. 3. A similar statement of all articles on board in transit to other ports. 4. A statement, in the copy of the *sobordo*, retained by the captain, of whatever goods the crew may have in their possession and the quantity of ship's stores remaining on board, including coal, if the vessel be a steamer.

And it is provided that on presenting such *sobordo* to the inspector, if it be not duly certified by a Spanish consul, a fine of \$200 is incurred, and, although the consul may have certified the document, yet, if it shall be found deficient in any respect, a fine of \$25 is imposed for each and every defect that may appear; that is to say, after requiring very much more than is usual in ship's papers, and making it the duty of the Spanish consuls to certify to their sufficiency in form, if that officer fail in his duty to point out irregularities, a fine must be paid by the captain for each instance of the consul's neglect. I am sure your excellency will agree that if these stringent requirements as to the contents of the *sobordo* are to be retained, the consul's certificate should, in all cases, be accepted as covering any defect of form in a document he has approved by his signature and seal of office.

Article 7 provides that if a captain fail to produce the *sobordo* and manifest when required to do so by the coast-guard, "at the moment of boarding the vessel," he shall incur a fine of \$500, unless it appear satisfactorily that he has been forced by some casualty of the sea to put into port suddenly. And it is provided in article 10 that the coast-guard may board a ship and demand her papers anywhere within a distance of twenty-three kilometers (14.291 English miles) from the port of destination. With reference to the latter article I have to observe, that I presume it cannot be the intention of His Majesty's government to enforce any such regulation beyond Spanish jurisdiction. As the article now stands, it amounts to the exercise of a right of search on the highseas, accompanied by an extreme penalty for a non-compliance with an unauthorized demand. And in any aspect of article 7, even if its execution be confined within Spanish jurisdiction, cases may often happen where, without fault or wrongful intent on the part of the captain or supercargo, the technical enforcement of the rule would be unjust and oppressive.

It is further provided, in article 11, that captains shall furnish the consul memoranda of the approximate value of their cargoes, to the end that these may serve as data for commercial statistics.

Article 13 requires that in the event of any disaster at sea making it necessary to throw overboard a portion of the cargo, the parcels, quantities, and classes of goods so lost shall be noted on the manifest.

I might proceed with the enumeration of many other features of these new regulations which seem to need modification in order that they may not needlessly burden and harass legitimate commerce, but, in view of the revision of the same ordered by

the minister of ultramar, I trust that the amendments and reforms that may be adopted will be such as to render further representations unnecessary.

I avail myself of this opportunity to repeat to your excellency the assurances of my most distinguished consideration.

D. E. SICKLES.

His Excellency the MINISTER OF STATE.

[No. 5.—Translation.]

Mr. Castelar to General Sickles.

MINISTRY OF STATE,
Madrid, May 16, 1873.

SIR: I have the honor to inform you, in reply to your note of the 27th of January last, that, as appears by a communication from the minister of ultramar, the suggestions contained in your note will be taken into account, as far as possible, in reforming the customs regulations of the island of Cuba, whose revision is now in progress.

With respect to the term of one year fixed for the return of fines imposed on captains of vessels, whether such fines be declared unjustifiable or whether their return be ordered as an act of grace by the government, I must beg you to remark that such a provision does not involve the necessity of permitting the full year to elapse in all cases before effecting the repayment ordered, but that it is the limit fixed within which to comply with the orders issued to that end, and such orders are not merely obligatory in the cases of those fines shown to have been wrongfully imposed, but also in the cases of such as have been levied for real faults of the captain or supercargo of the vessel and subsequently pardoned as an especial act of grace.

I avail myself of this occasion to repeat to you, sir, the assurances of my most distinguished consideration.

EMILIO CASTELAR.

No. 6.—*Draft of proposed note to the Minister of State.*

UNITED STATES LEGATION IN SPAIN,
Madrid, June , 1873.

SIR: I have the honor to acknowledge the receipt of a note from your excellency, dated the 16th ultimo, in reply to mine of the 27th of January last, respecting the onerous burdens imposed on the trade between the United States and Cuba by the customs authorities in that island.

I regret to have occasion again to solicit the kind aid of your excellency in bringing to the notice of your distinguished colleague of the colonial department some further representations I am instructed to make on this subject.

It appears from sundry memorials recently presented to my Government by American ship-owners and masters of vessels, and also from the official reports of the consul-general of the United States in Cuba, that notwithstanding the assurances given me in the several communications received from the ministry of state, under date of February 4, 1871, and of January 2, 1873, the reforms and ameliorations therein announced have been but imperfectly carried into effect in Cuba.

The memorialists therefore solicit the aid of their government in further efforts to obtain relief from grievances of which, I am persuaded, your excellency will admit that they justly complain. It is, perhaps, unnecessary to assure your excellency that my Government disclaims any purpose of discussing the perfect right of every nation to establish and enforce such rules as it may choose to frame for the execution of its own revenue laws. It is to be presumed, however, that it cannot be the intention of this class of local ordinances to inflict needless vexation and loss on foreign vessels engaged in legitimate commerce between friendly countries.

That your excellency may see how difficult it has been for foreign ship-masters to inform themselves as to the requirements of the customs regulations in Cuba, I may be permitted to recapitulate the successive orders, decrees, and circulars which have been published from time to time within a few years past. On the 1st of July, 1859, a royal order was issued in Madrid, prescribing numerous regulations for the government of foreign commerce with Cuba. The order was suspended soon after its publication, and remained in abeyance until July, 1867. It was then promulgated anew, with important modifications respecting the manifest.

With the publication of the decree of 1867, appeared also in the Spanish, French, and English languages what purported to be identical "rules to be observed by the captains and supercargoes of vessels, in conformity with the royal order of July 1,

1859, the royal decree of March 1, 1867, and the rules in force according to the existing custom-house regulations."

On the 18th of November, 1868, the last-named ordinances were suspended and a fresh compilation of rules issued, in which it is to be especially noted that the requirements as to the manifest were again changed and made more exacting; and also that the Spanish original and the English and French versions, as published, differed essentially in the terms of the first rule prescribing the contents of the manifest.

On the 16th of May, 1870, the rules of 1868 were again promulgated, with further modifications and interpretations, announced in a circular from the intendente general de hacienda of Cuba.

On the 9th of June, 1870, the minister of ultramar ordered the remission of all fines imposed in Cuba for the non-presentation of a third copy of the manifest, forbidding the provincial authorities from changing the customs legislation, declaring them personally liable for damages caused by such transgression, and restoring to force and effect the royal order of July 1, 1859, as modified by subsequent orders; this decree was published in Cuba July 6, 1870.

On the 3d of November, 1870, the intendente general de hacienda, in an official communication, informed the consul-general of the United States at Havana, that so much of last-mentioned decree of June 9 as remitted fines for the non-production of a third copy of the manifest had been annulled on the 21st of September.

On the 29th of December, 1872, another decree was published containing a new code of regulations, modifying in various particulars, those previously in force.

On the 2d of January, 1873, the minister of state informed the undersigned, in reply to sundry reclamations made by the United States Government—1st. That hereafter no fine imposed by the customs authorities in Cuba upon captains or supercargoes of national or foreign vessels for errors, omissions, or inaccuracies in ships' manifests or *sobordos* should take effect without previous approval of the intendente general de hacienda, the administrators and treasurers of the several custom-houses being required to exact, on their own responsibility, a sufficient guarantee to protect the interests of the treasury in case vessels put to sea before the payment of fines. 2d. That with all convenient speed the intendente should propose such separation as could be made between the facts and details now required to be stated in the *sobordos*, retaining such as served to prevent fraud and discontinuing those not important to the interests of the revenue; and 3d. That fines imposed on captains or supercargoes of vessels for error in their papers and subsequently revoked, as well as those spontaneously condoned by the supreme government, should be refunded within the fixed term of one year, counting from the date of the reception by the intendente of the order directing such restitution or declaring the penalty to have been improvidently imposed.

The undersigned is not informed that these dispositions have been published in Cuba, nor is he advised that they have yet been put in practice.

In my notes of July 16, 1870, November 27, 1872, and January 27, 1873, the attention of your excellency was invited to various clauses of the royal order of July 1, 1859, the decree of March 1, 1867, the regulations of November 11, 1868, and those of December 26, 1872, which seemed to my government unreasonably severe and punitive in their treatment of lawful commerce. It is unnecessary to recapitulate the views presented in those communications. I desire now, more especially, to bring to your excellency's notice the representations made by the merchants of New York and Boston, in a recent communication they have addressed to the Department of State at Washington.

They show, for example, that in making out their manifests, they are entirely dependent on the shippers of cargo for information as to the weights, values, and contents of packages shipped, and that irresponsible parties sometimes give false or inaccurate descriptions of their consignments, resulting in fines imposed on vessels largely in excess of the freight received. It is therefore suggested that whenever the contents, weight, or value of any package be found on examination to differ from the description of the same in the manifest, the penalty thereby incurred shall be imposed on the goods in the said package, and not upon the vessel. In such cases, if it should be established on the part of consignees that the master of the vessel is in fault, they would have ample legal remedies against the ship-owner. On this point the consul-general of the United States at Havana reports, under the date of January 13, 1873, that he had pointed out to the intendente that it would be more just to hold the goods rather than the vessel responsible for any concealment or deceit respecting the contents of packages, and that the intendente replied that such a rule would be more equitable, but the regulations put the fine on the vessel.

It also appears that the customs authorities at the several ports in Cuba place different constructions on the laws and regulations prescribing the form and contents of a ship's manifest. Fines have been imposed in one port for stating that for which fines were imposed in another port for omitting. Inasmuch as it is required in all cases that the manifest shall be certified in duplicate by the Spanish consul at or nearest to the port of loading, it is proposed, as a just and convenient remedy for such irregularities, that

manifests bearing the certificate of a Spanish consul shall be accepted in any of the ports of Cuba as regular and sufficient in form.

I have observed that, in nearly all of the cases I have had occasion to bring to the notice of the predecessors of your excellency, the manifest in duplicate had been exhibited to the Spanish consul at the port of departure, one copy of the document having been left with him, to be transmitted to the port of destination, and the other, approved under the hand and seal of the consul, returned to the master of the vessel, to be afterward presented by him to the customs authorities. Surely it should be held sufficient to exonerate ship masters from penalty if their papers are found to be in due form by the commercial agents of the country to which they are bound. If a ship-master arriving in Cuba does not produce the consul's certificate he is fined five hundred dollars. If he does produce such a certificate, and the manifest is nevertheless informal, he is fined for every oversight or neglect of the consul to point out informalities subsequently discovered by the more expert customs officers in Cuba. The blame, if any, in such cases is with the consul; and yet others, who are blameless, pay the penalty. And not only are ship-masters fined when consuls overlook mistakes in a manifest which it is their duty to correct, but it has not infrequently happened that American vessels are made to pay a penalty because the certificate of the Spanish consul was informal. The brig *Dexter Washburne*, of Portland, was fined one hundred dollars at Matanzas because the consul at Charleston had neglected to impress his official seal on a manifest after verifying it. Spanish consuls may be presumed to know the customs regulations in Spanish ports; at least their official certificate and seal authenticating a manifest should be accepted as evidence of an honest intent on the part of ship-masters to respect and obey Spanish laws; and if the consul is excused for ignorance of the customs regulations of his own country, the foreign ship-master should not be punished for the fault of the official to whom he is compelled, under heavy penalties, to apply to certify the regularity of his papers.

It is likewise stated that ship-masters are only informed at the last moment before the departure of their vessels of fines imposed on them. This notice is usually received when application is made at the custom-house to clear their ships for another port, so that the vessel must be indefinitely detained if payment be contested, or else the fine must be paid, no matter how unjust it may be, in order to avoid the greater loss of detention. It would seem that a practice so unreasonable and inconvenient might be prevented by a regulation requiring the customs authorities to make known to the captains or supercargoes of vessels all fines for irregularities in ships' papers within forty-eight hours after the said documents shall be delivered to the proper officers. Complaint is also made by fifty-five American ship-masters who had delivered cargoes in the port of Matanzas, and thirty-three captains of American ships which had made voyages to the port of Santiago de Cuba, that with the utmost desire on their part to conform to the requirements of the customs authorities, they had nevertheless found it impossible to fill up a manifest which had not afforded some pretext for fines, ranging from twenty-five to five hundred dollars. So various and so frivolous are the grounds on which fines were imposed that it would be in vain, they say, to attempt to enumerate all of them. Informalities of the most trivial nature are deemed sufficient to impose on them the severest penalties. These ship-masters state: "It is never alleged that we intend to defraud the Spanish revenue. We are fined for an absence of the name of the shipper of the goods and the consignee; for a failure to express numbers, weights, and measures, in letters and figures; for a failure to state, after the enumeration of our cargo, that we carry nothing else; for a failure to make a similar statement when we come in ballast, for an absence of what is known as the asseveration of the words 'so help me God;' for the slightest error in converting American weights and measures into Spanish denominations; for omitting in the heading of the manifest the nationality, class, and tonnage of the vessel, name of captain, place whence she comes, and port whither bound; for consigning goods to order, although they may be so consigned in the bill of lading."

Illustrations of the character of these penalties are also found in the reports of the American consuls in Cuba. It appears that although the regulations may have been followed in stating the generic class of freight, yet vessels are fined because a manifest does not also contain a specific description of the cargo. For example, fines have been imposed because hoops were not described as "wooden" hoops, and because nails were not stated to be "iron" nails. In other cases extreme technicality is required in the terms used in stating the nationality of a vessel. It is held to be insufficient when the manifest shows the name of a ship and the port or place where she is registered, since, for example, fines have been inflicted when the manifest has described a vessel as "the brig *Hudson*, of New York," because it was not stated that she was the "American brig *Hudson*, of New York." Penalties have likewise been exacted for omitting to state the marks and numbers of packages which were neither numbered nor marked.

Two very remarkable cases are found in a late dispatch from the United States consul-general in Havana. He reports that the American mail steamer *Crescent City*, having arrived in that port on the 13th of October last with a manifest containing fifty-eight

items of cargo, was fined fifty-nine times; in other words, a fine of twenty-five dollars for each item in the manifest, and five hundred dollars besides for the want of the usual consular authentication of that document, although the consul's certificate had never before been required of mail steamers; that is to say, the manifest having been filled up under a misapprehension of the regulations in force at the moment, and the same error having occurred in noting each item of freight, amounting at most to but one offense, if it could be called an offense, yet the penalty was repeated fifty-eight times, according to the letter of a rule not known to the master until after his arrival in port. And there is a case now pending at Sagua la Grande—that of the American brig G. de Zaldo, which has been fined one hundred and forty-nine times for mistakes in her manifest. One hundred of these fines are for a single item noted in the manifest as 100 kegs of lard. The customs authorities say that these should have been called “tierces;” and for that misnomer they impose a hundred fines of twenty-five dollars each! It is scarcely too much to affirm that customs regulations executed in such a spirit tend toward the exclusion of foreign vessels from commerce with Cuba.

As a general rule, a ship's manifest corresponds in its description of the cargo with the bills of lading delivered; and these are made out from the data furnished by consignors in settling the terms and conditions of the contract for freight. This custom was recognized in the royal order of July 1, 1858, and in the royal decree of March 1, 1867. It is the general practice of commercial nations to regard the manifest as a means only of identifying the several shipments constituting the cargo. It is the peculiar office of the invoice, as distinguished from the manifest or bill of lading, to set forth the information on which duties are ascertained. The owner or agent entering goods in a foreign port for consumption or sale alone possesses full and accurate knowledge respecting his importation. The mere carrier, whether a ship-owner or a railway corporation or an express company, cannot furnish information respecting the contents of closed packages. Duties are never charged and collected upon the statements contained in a manifest. Port charges do not depend upon the nature of the cargo. It is not, therefore, easy to discover what useful purpose is served by exacting in a manifest more than is necessary for the identification of the articles comprising the cargo, and less than is required for the computation of imposts.

The payment of duties is seldom, if ever, evaded by means of combination between owners of vessels and owners of cargo. The risk incurred by the ship would be far greater than any gain derived from the transaction. And since ship-owners are not the accessories of consignees in defrauding the revenue, neither should they be made to suffer penalties for the conduct of others, for whose acts they are not justly responsible. Nor can ship-masters, by collusion with parties at the port of destination, defraud the revenue without extreme peril to themselves and the vessels they command. It is a mistake to assume, as seems to be the practice in Cuba, that the revenue frauds said to be so common there are to be attributed to masters of foreign vessels. These practices on the part of unprincipled dealers in commercial towns generally depend for their success on facilities acquired by long residence, by confidential relations with subordinate customs officers, by false representations in invoice, and by various devices known to themselves in making up packages. The ship's manifest neither aids a dishonest importer in consummating a fraud, nor assists a vigilant revenue official in detecting imposture. On the contrary, it most frequently happens that an upright ship-master is subjected to penalties which he would have escaped if he had conspired with those whose connivance is essential to the success of revenue frauds.

I might point out several instances in which the requirements of one regulation cannot be obeyed without violating the provisions of another. One illustration of these contradictions will be sufficient to show the necessity of a further revision of these ordinances. Article 4 requires the captain at the end of the voyage to note in the duplicate *sobordo* he retains, (1) any goods in the hands of the crew; (2) the surplus ship's stores; (3) arms and ammunition; (4) coal on board, if the vessel be a steamer. And yet article 8 denounces any amendment or alteration whatever in the *sobordo*, or manifest, as a forgery for which the captain will be arraigned before the criminal tribunals.

It is extremely desirable that the uncertainty resulting from so many successive orders and decrees, and the various interpretations given to particular clauses at the several ports in Cuba, should be removed by an authoritative declaration by the supreme government.

1st. Is a third manifest necessary besides the two required to be certified by the Spanish consul? I have already shown that on the 9th of June, 1870, a decree was issued by the minister of ultramar remitting all fines imposed in the island of Cuba for the non-presentation of a third manifest. This decree was published in the official gazette, at Havana, and communicated to the Department of State at Washington. Yet afterwards numerous fines were exacted from foreign vessels because they were not provided with a third manifest. Subsequently, on the 4th of February, 1871, the minister of state, Mr. Martos, in reply to a note from me on this subject, said:

“Respecting fines inflicted on captains of vessels for informalities in their manifests, or for not having presented them, in addition to the cargo list certified by the Spanish

consul at the port from whence they sail, considering that in these omissions there was no intention to defraud, the said fines have been remitted in those cases in which the vessels had entered the ports of the island of Cuba since the 19th of December, 1868, that being the date when the order of the provisional government of the 11th of November then last past commenced to be in force."

Nevertheless it appears that the customs authorities in Cuba continued to impose fines as well for not presenting as for informalities in the third manifest. And now, according to the tenor of article 7 of the new regulations of December, 1872, the captain must provide himself with a manifest, besides the duplicate *sobordo* certified by the consul.

2d. Is it necessary that foreign vessels should state their tonnage according to Spanish measurement? Upon this point, likewise, contrary decisions have been made since I had the honor to receive the note of the minister of state, Mr. Martos, dated February 4, 1871, in which his excellency said:

"Captains of foreign vessels are no longer required to declare the tonnage of their vessels in Spanish measure, it being sufficient on the first voyage for them to make such declaration in conformity with the builder's measurement, or according to the measurement of the respective nations to which they belong, being, however, obliged thereafter to show certificates of the measurement that shall have been used for the collection of tonnage-dues, as laid down in the order of the 9th of July last."

Nevertheless the new regulations of December, 1872, article 12, impose a charge on the captain who fails to declare the exact capacity of his vessel according to the Spanish standard.

3d. It is enough that the manifest state generally the class of merchandise comprising the cargo, with the marks, numbers and weight of packages, or must the contents of each and every package be particularly described?

4th. It is respectfully suggested that whenever the contents of packages are found on examination to differ materially from the description of the same in the manifest, the penalty thereby incurred shall be imposed on the goods and not on the vessel.

5th. To the end that foreign ship-masters entering Cuban ports may be relieved from the hardship and vexation of so many penalties imposed for trivial informalities in the manifest, it is respectfully submitted that the certificate of the Spanish consul, at the port of departure, should be accepted as a sufficient authentication of the regularity of that document.

6th. A further regulation is respectfully proposed requiring the customs authorities to make known to the captains or supercargoes of vessels all fines for irregularities in ship's papers within forty-eight hours after said document shall have been delivered to the proper officer.

7th. In conclusion I beg leave to observe to your excellency that long delays continue to occur in the return of money collected for fines subsequently remitted. Fines imposed on American vessels in 1868, and which General Lersundi ordered to be returned more than four years ago, are still withheld by the intendency. Considering the facility with which penalties are inflicted, and the difficulty incident to their remission, it would seem there should be no hesitation in the matter of restituting after a decision to that effect has been announced.

Appended to this note I have taken the liberty to transmit for your excellency's perusal several papers on this subject which I have received from my Government.

(A) is a copy of a dispatch from the consul-general of the United States at Havana, dated October 30, 1872, giving many examples of unjust fines imposed.

(B) is an extract from another communication from the consul-general, dated January 13, 1873.

(C) is a copy of a memorial addressed to the Secretary of State of the United States, dated New York, January 13, 1873, and signed by many respectable ship-owners trading between that city and the several ports in the island of Cuba; the same memorial is also signed, under date of January 28, 1873, by other firms of equal respectability residing in Boston.

I avail myself of this opportunity to repeat to your excellency the assurances of my most distinguished consideration.

D. E. SICKLES.

No. 408.

General Sickles to Mr. Fish.

No. 627.]

UNITED STATES LEGATION,
Madrid, June 12, 1873. (Rec'd July 1.)

SIR: I have the honor to forward herewith a translation of a royal order, dated May 28, 1825, conferring extraordinary powers on the captain-

general of Cuba. This order is still in force. You will observe that by its terms Cuba for nearly half a century has been treated as a territory in a state of siege, in which military authority has been supreme, the commanding officer having absolute power over the persons and property of the inhabitants, and the right, besides, to suspend the execution of any command or instruction emanating from the supreme government.

I have repeatedly suggested to successive cabinets in Madrid that as long as the Cuban administration is thus allowed to be independent of the Spanish government, it is in vain to look for obedience to its laws or respect for the rights and interests of American citizens in that island. In view of the delay in the execution of the orders issued in the cases of Santa Rosa and Kryké, I renewed these representations to the government of the republic.

Mr. Sorni replied that in these cases even the royal order of Ferdinand VII afforded no justification to the captain-general. He had not suspended the execution of the orders by virtue of extraordinary powers vested in him; he had reported that he had obeyed them, and they were not executed. The government would therefore hold him strictly responsible for immediate compliance with his duty in the premises.

It is proper to add that the anomalous relation between dependent and superior authority created by this royal order is not confined to Cuba. The same practice has long existed in Spain, although I am not aware that it has been here formally recognized and sanctioned by the government. *Se obedece pero no se cumple* is an ancient formula of Spanish viceroys and governors. The authority is respected, but the order is not executed, and thus a supposed conflict between duty and necessity is reconciled.

I am, &c.,

D. E. SICKLES.

[Appendix.—Translation.]

Extraordinary powers conferred upon the captain-general of Cuba by royal order of May 28, 1825. (Still in force.)

ROYAL ORDER.

His Majesty being fully persuaded that at no time and under no circumstances whatever is there any possibility of weakening the principles of rectitude and of love to his royal person which characterize your excellency, and His Majesty being desirous at the same time to guard against the inconveniences which might arise in extraordinary cases from a division of commands, and from the complexity of powers and attributions in the respective public posts, and with the important object of maintaining in your most precious island his legitimate sovereign authority and public tranquillity, has been graciously pleased in conformity with the advice of his council of ministers to give your excellency full authorization, conferring upon you all the powers which by the royal ordinances are granted to the governors of cities in a state of siege, (*plazas sitiadas*.) In consequence of this His Majesty gives your excellency ample and unlimited authorization, not merely to dismiss from the island and send to the peninsula any public functionaries, whatever may be their office, rank, class, or condition, whose stay in the island may be prejudicial, or whose public or private conduct may arouse your suspicion, replacing them temporarily by the faithful servitors of His Majesty who may merit all your excellency's confidence, but also to suspend the execution of any orders or general instructions whatever emanating from any of the branches of the administration in such degree as your excellency may deem expedient for the royal service, such suspensions being in all cases provisional, and your excellency being required to give account thereof to His Majesty. In extending to your excellency this signal proof of his royal appreciation and of the high confidence he reposes in your well-known loyalty, His Majesty hopes that in worthy justification of this confidence you will use the greatest prudence and circumspection, joined to untiring activity, and trusts that your excellency, being by this present act of his royal

bounty placed under a most rigid responsibility, you will redouble your vigilance to cause the laws to be observed, justice to be administered, the faithful vassals of His Majesty to be protected and rewarded, and to secure the punishment without hesitation or dissimulation the misdoings of those who, forgetful of their obligations and of what they owe to the best and most beneficent of sovereigns, contravene their duties and give free rein to their sinister machinations in infraction of the laws and of the governmental prescriptions issued in virtue thereof.

By royal order I communicate this to your excellency for your information.

May God preserve your excellency many years.

MADRID, *May 28, 1825.*

AYMERICH.

The CAPTAIN-GENERAL of the *Island of Cuba.*

No. 409.

General Sickles to Mr. Fish.

No. 628.]

UNITED STATES LEGATION IN SPAIN.

Madrid, June 12, 1873. (Received July 1.)

SIR: I have the honor to forward herewith the translation of a decree, dated June 2, 1873, abolishing the hereditary office of grand chancellor of the Indies. This office, created July 27, 1623, by Philip IV, and conferred upon the Count-Duke of Olivares and his successors forever, has been enjoyed with brief interruptions in the same family for two centuries and a half. The last incumbent, the Duke of Alba, brother of the Empress Eugénie, discharged the duties of the place by a delegate named by himself. It is perhaps a misnomer to characterize as "duties" the functions of a sinecure which consisted in levying a charge for authenticating with the seal of the grand chancellor every document, commission, order, or decree of the government having relation to the Spanish possessions in America. Hitherto all attempts to abolish the office, although supported by the recommendation of the council of state, itself a bulwark of tradition, have failed. It is one of the forms for which it was necessary to await the advent of the republic.

I am, &c.,

D. E. SICKLES.

[Appendix A.—Translation.]

MINISTRY OF THE COLONIES.

Decree of June 2, 1873, abolishing the hereditary office of grand chancellor of the Indies.

PREAMBLE.

For the proper fulfillment of the mission of the government of the republic it is needful to remove those administrative obstacles which, originating in the abuses of royal power, and maintained in consequence of misunderstood toleration during the era of representative governments, hinder the realization of equality and justice, the indispensable basis of regularity and order in the management of public affairs.

From the initiation of the constitutional system among us, it doubtless endeavored to extinguish the innumerable examples of gracious concessions and alienations of office and functions of the state granted as an inheritance by the monarch, their retention being considered contrary to the fundamental code; but all of these were not suppressed by the measures adopted to that end, giving rise to the persistent exceptions by which, under a scheme of liberty based on the national sovereignty, a part of the functions of the public power were exercised as an inherent right by a private citizen raised by privilege above the delegates of that sovereignty.

This is the case with the office of chief chancellor and registrar of all the Western Indies, conceded by the grace of King Philip the Fourth to Don Gaspar de Guzman, Count-Duke of Olivares, July 27, 1623, for himself and his heirs forever, converted by the decree of November 3d of the same year into the title of "grand chancellor of the Indies," with the duties of keeping the seal, and causing it to be impressed on all titles, warrants, and dispatches issued by the supreme power upon all matters relative to the colonies, receiving therefor the fees prescribed in the tariff, and with other prerogatives and distinctions equally unjustifiable and unreasonable, such as the enjoyment of all the wages, salaries, and presents *casos de aposento*, and all remaining emoluments assigned to the president or governor of the supreme council of the Indies, in which for some time, until 1794, the chancellor had a seat and vote.

Notwithstanding the vicissitudes through which this privilege passed—incorporated with the crown on the 20th of December, 1776, restored to the family of Olivares on the 9th of February, 1794, and again incorporated on the 22d of February, 1817, and restored anew on the 25th of April, 1826; notwithstanding the evident disparagement of the dignity of the government and the decorum of the nation, inseparable from the fact of subjecting the acts of the governmental power to the authorization of a private citizen; notwithstanding the obvious and irritating contradiction between the undue maintenance of the office and the principles which should control the course of business in a liberally-governed country, the office still exists, at least so far as relates to the keeping and impression of the seal and the registration of warrants, titles, and dispatches, the holder of the office exacting the tariff fees; and its functions, which are perfectly unnecessary, contrary to the right, embarrassing to public business, onerous to those interested therein, and offensive to the national dignity, are at present exercised by a delegate irregularly intruded and capriciously appointed by him who obtained the title of the Duke of Berwick and Alba, the holder of the office as the successor of the Count-Duke of Olivares.

This state of things cannot and should not last. Already in past times, when the council of state was consulted, it made, in full session, a report favorable to the disappearance of these functions, which are inconceivable in a well-regulated government separate from its own administrative centers, and public opinion has been eloquently enough manifested by identical tendencies conformable to reason and right principles.

And, on the other hand, a gratuitous concession, as an act of grace, by one who, as chief administrator, retained the thing conceded, cannot be sanctioned in an era of justice and strict observance of right.

Relying upon these considerations, the undersigned minister submits to the government the accompanying draft of a decree.

MADRID, June 2, 1873.

The Minister of the Colonies,
JOSÉ CRISTOBAL SORNI.

DECREE.

In consideration of the reasons set forth by the minister of the colonies, and in accordance with a report of the council of state in full session, the government of the republic decrees:

ARTICLE I. The functions of grand chancellor of the Indies, now exercised by the possession of the title of the Duke of Berwick and Alba, as the successor of Don Gaspar de Guzman, Count-Duke of Olivares, to whom that office was granted as an act of grace and to his heirs forever, by decrees of July 27 and November 3, 1623, are hereby abolished, from and after the publication of this decree in the Gazette of Madrid.

ART. II. With respect to the dispatches, titles, warrants, and other documents hereafter issued, and which, in conformity with previous legislation, require to be stamped with the seal of the Indies, the signatures thereof shall be legalized by the seal of the ministry that issues them, without fees of any kind being exacted for so sealing them.

ART. III. The minister of the colonies shall prepare suitable regulations for the registration of warrants, titles, and dispatches, by the chancery of the department under his charge.

ART. IV. All previous provisions contrary to the prescriptions of this decree are hereby revoked and annulled.

Given in Madrid the second of June, one thousand eight hundred and seventy-three.

The President of the Government of the Republic,
ESTANISLAO FIGUERAS.

The Minister of the Colonies,
JOSÉ CRISTOBAL SORNI.

No. 410.

General Sickles to Mr. Fish.

[Extract.]

No. 643.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 5, 1873. (Received July 31.)

SIR: I have the honor to transmit herewith a copy and translation of a memorial of the Spanish Emancipation Society, lately presented to the Cortes Constituyentes. The petitioners include a number of the most influential members of the legislative body. The main facts and arguments, showing the expediency and necessity of the immediate abolition of slavery in Cuba, are stated with unusual brevity and force. The admirable results of the liberation of the slaves in Porto Rico have greatly encouraged the friends of emancipation. The slaveholders in Cuba are at a loss for pretexts for delay now that domestic servitude in the sister island has disappeared without any disturbance of public order or diminution of the sugar crop.

The colonial minister, Mr. Suñer y Capedevila, has recently stated in the Cortes his purpose to bring forward in the name of the government a radical emancipation bill. In several conversations with me he has reaffirmed these declarations with an earnestness and warmth of expression leaving no room to doubt his zeal. It is simply a question whether the perpetual changes of ministers in this country may not interrupt the labor of Mr. Suñer, as has before happened to several of his predecessors.

The president, Mr. Pi y Margall, is equally frank and emphatic in his avowed determination to put an end to slavery in Cuba. He does not propose to wait for the suppression of the rebellion, nor for the solution of the financial crisis in the island, nor for the restoration of tranquillity in Spain. On the contrary, he regards emancipation and other cognate reforms as the best means of restoring peace and prosperity to Cuba. He assures me he desires to see Cuba and Porto Rico admitted as states in the Spanish federal union. These are, likewise, the views of the colonial minister.

Mr. Castelar, Mr. Dias Quintero, Mr. Salmeron, and other influential members of the committee appointed to draft the federal constitution, are understood to entertain similar views. * * *

I am not without hope that the political administrative and social reforms we have so long urged upon this country in the government of its American possessions may be attained by means of suitable provisions embodied in the constitution of the republic.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

*Petition of the Spanish Abolition Society to the Cortes Constituyentes, Madrid, June 1, 1873.**To the Cortes Constituyentes:*

The undersigned, president, vice-president, active members, and secretaries of the Spanish Abolition Society, with the greatest respect show that, whereas—

First. The definitive law of abolition for Cuba has not yet been promulgated, although referred to the preparatory law of July 4, 1870, and solemnly and repeatedly promised by the Spanish government before Congress and the civilized world.

Second. The preparatory law of 1870, notwithstanding its urgent character, remained in suspense, as far as its principal articles were concerned, until the appearance of the regulations published in the Madrid Gazette, August 18, 1873.

Third. The regulations in question not only totally ignore the important inquiry of the captain-general of Cuba concerning the fulfillment of the fifth article of the preparatory law, but also, from the nature of many of their provisions, they render necessary a new set of *explanatory* regulations, at the same time creating institutions of the efficiency of which there can be no doubt.

Fourth. Notwithstanding the promulgation of the regulations in the *Gaceta de Madrid* nine months ago, not a single one of its provisions has yet been put into operation in Cuba.

Fifth. On the contrary, the superior government of the island of Cuba has decided to modify a rule of the old slave regulations which was favorable to the negroes, and to declare henceforth—and for the purpose of constraining them—that the value of a slave shall be estimated according to his personal merits, thus interposing an obstacle to emancipation.

Sixth. In Cuba the law of 1870 has been grossly misinterpreted, and the old *emancipadors* have been made to subscribe *labor contracts* for eight or ten years, under conditions sufficient to annul such contracts for substantial error and irregularity in conformity with the express text of the Spanish law of contracts.

Seventh. In violation of our colonial laws and in derision of the provisions of the Porto Rican abolition law passed March 22d last, many slaves have been taken from the lesser Antilla and, as such, sold in Cuba, when their presence is a source of real danger; and, in fact, the owner of one of those unfortunate beings, has already met his death at the hands of a Porto Rican mulatto.

Eighth. The insurrection in Cuba has caused the dispersion of more than 55,000 slaves who do not, in point of fact, appear enrolled in the census of 1871 in the divisions corresponding to the districts of Santiago de Cuba, Las Tunas, and Moron.

Ninth. The partisans and upholders of the Cuban insurrection have renounced all the rights to their former slaves guaranteed to them under Spanish laws; this renunciation having been effected either indirectly, as in the case of the constitution proclaimed in the insurgent camp in April, 1869, in which (Art. 24) the absolute freedom of the negroes is declared, or else explicitly, as in the case of the rich planter, Don Miguel Aldama, who executed a full power, dated December 6, 1872, authorizing the abolition societies of Spain, Paris, and London to demand, either before the courts or from the Spanish government, the freedom granted by him to more than 1,100 slaves which had belonged to his plantations of Armonia, Santa Rosa, Concepcion, San José, and to Santo Domingo.

Tenth. By various judgments of councils of war and some of the ordinary courts of Cuba, dated October and November of 1870 and 1871, the state has seized, either by means of confiscation or to attack the civil responsibility, that always accompanies criminal responsibility, more than 10,000 slaves belonging to the insurgents, while article 5, of the preparatory law of 1870, declares that "the state can hold no slaves."

Eleventh. Nearly two-thirds of the negroes employed in field-labor (some 292,000, according to the census of 1862) are *bozales*—that is, slaves surreptitiously introduced in defiance of the treaties celebrated with England in 1817 and 1835, and in contravention of existing laws in Cuba, especially since 1845.

Twelfth. It is notorious that the Havana journals continue to publish advertisements of the sale of *negroes de nacion*, a phrase which means that the slave in question is a *bozal*, or native African, and therefore that there is no legal right to his possession.

Thirteenth. In like manner advertisements continually appear in the Cuban journals offering for sale children of from four to ten years, without father or mother, thus positively showing the contemptuous way in which the stringent provision of the law of 1870, relative to the union of slave families, is violated.

Fourteenth. The colonial minister, notwithstanding that a national representative in the late Congress urged him to lay before the Cortes certain data relative to the execution of the law of 1870, and, among these, in particular, a statement of the number of slaves emancipated in consequence of excessive cruelty (*sevicia*) on the part of their owners, has not been able to communicate the data called for, because *they are not in his possession*.

Fifteenth. Among the infamous inventions of some slave-holders is an instrument for the corporal punishment of their slaves, by which blows are inflicted without breaking the skin or leaving any outward mark. Full details of this have been received by the Abolition Society, and are offered as evidence of a new violation of the law of 1870.

Sixteenth. It is a well-known fact circumstantially described by travellers who have recently visited the interior of Cuba, and recognized by even the bitterest enemies of abolition, that the bulk of the insurgent bands in Cuba consists of fugitive plantation negroes and Chinese run-aways, who prefer death rather than return to their former servitude.

Seventeenth. The burning of plantations situated in the western department and in districts like Matanzas has been recently begun, and rumor attributes these acts to the Chinese and slaves.

Eighteenth. The law of March 22, 1873, has begun to be put into operation in Porto

Rico without any indication whatever of the conflicts prophesied by its enemies; on the contrary, it has tended to quiet the agitation that existed there, and to overcome, with extraordinary rapidity, the difficulties of the political situation of that island produced by the obstinate opposition of the slave-holding element to all reform, and especially to the reforms proposed by the government of Madrid, as well as by the necessity of proceeding to an election for deputies to the Cortes under a new electoral census, whereby the number of votes would be largely increased, and under the influence of a political change of the nature of that which has brought about throughout the whole Spanish nation, the substitution of the republic for the democratic monarchy; and,

Nineteenth. Whereas, in contradiction of the foregoing prognostics and calumnies, of which the negro race has so long been the object, it is a fact that all the old slaves have remained *spontaneously* working as freedmen (*libertos*) on the plantations of their former masters, with the sole exception of those belonging to the few planters in Porto Rico who had become known for their cruel treatment of their slaves, against which the latter have protested, asking and obtaining the privilege of entering the service of other masters; and, further considering,

First. "That slavery is an outrage upon human nature, and a stigma upon the only nation that still maintains it in the civilized world," according to the eloquent and manly declaration of the superior revolutionary Junta of Madrid on the 15th of October, 1869.

Second. That servitude is in every way incomprehensible in the dominions of a nation which, like the Spanish, after framing *for itself* the political constitution of 1869, and having recognized the existence of *the natural and inalienable rights of man*, has had sufficient moral force to strive for and obtain a *democratic* republican form of government.

Third. That as often as the Antilles have been consulted on the subject, just so often have their inhabitants proposed to the mother country the abolition of slavery, as is proved, among other things, by the report of the Cuban commissioners to the government in 1866, and according to the plan proposed in that report by a scheme of gradual emancipation, slavery would have already ceased to exist in 1873.

Fourth. That an analogous spirit has been exhibited by many of the present holders of slaves in Havana, as is shown by the meetings held by them in July and August, 1870, at the palace of the captain-general, and also by the meeting held in the early part of 1873 in the Spanish casino, in that city, in anticipation of immediate and radical action of the home government.

Fifth. That a portion of the Havana press has declared itself in favor of abolition, although expressing this with the reserve imposed upon the press by Cuban legislation.

Sixth. That even the conservative party of the peninsula was agreed in 1870, in spite of the harshness of the war in Cuba and the difficulties of home politics in Spain, upon the necessity of a definite law of emancipation, as is proved by the report of the committee, almost wholly composed of conservatives, which was appointed in the Cortes of 1869 to examine the emancipation project presented by the government.

Seventh. That the greatest peril of the situation in Cuba is an armed propaganda which the insurgent negroes may undertake in favor of abolition, and this danger is so evident that the military authorities have recently prohibited the transfer of negroes from the central to the western department.

Eighth. That, according to the opinion of the same peninsular conservatives, and perhaps as a consequence of the agitation set on foot against the law of emancipation for Porto Rico, it is a matter of fact that the reform so brilliantly and successfully realized in the lesser Antilla is exerting a positive influence on the negroes held in the cities of Cuba.

Ninth. That the slavery question being now one of international law, (*derecho de gente*), both slavery and the former conduct of the Spanish government have been protested against by the ministers and representatives of the most authoritative of the great free peoples; while on the other hand, in foreign countries, an extraordinary movement of sympathy toward our government was occasioned by the mere presentation to the late Congress of the Porto Rico abolition law.

Tenth. That the retention of the *bozales* in bondage is a peril to the good relations between our cabinet and that of England, especially as, as is well known, the latter, at the beginning of the century, paid forty millions of reals as indemnity for the capital engaged in the slave trade, and on condition that it should be finally put a stop to.

Eleventh. That the ill-success of the preparatory law need not, and should not, surprise those who are familiar with the history of the emancipation of labor, wherein it is recorded that such measures have *always* failed, and that the legislators have been forced to resort to others more radical, such as immediate abolition, as took place in Jamaica, St. Thomas, the Dutch colonies, and is even now taking place in Brazil.

Twelfth. That it is an indisputable fact in the history of abolition by radical means, that it not only has falsified the blind hopes of its enemies with respect to the evil results

they supposed it would lead to, but it has served to restore tranquillity to countries disturbed both by the appalling prophecies and unworthy machinations of the pro-slavery party, and by other causes foreign to the problem of slavery, and referable to the general situation of those communities of which eloquent examples are found in Antigua, Guadalupe, Barbadoes, Santa Cruz, the United States, and, at the present time, Porto Rico.

Thirteenth. That deducting from the total number of slaves held in Cuba in 1872, (in all, 264,692, of which 2,237 were *coartados*,*) the *bozales*, and all those embargoed and confiscated from the insurgents in Cuba, it may be shown that there are not more than 70,000 negroes in that island whose possession has even a show of legality.

Fourteenth. That the abolition of slavery may, at the present time, be a highly politic measure to end the Cuban insurrection, while its withholdment is a continued motive of resistance, as was the case in 1793 and 1804 in the island of Santo Domingo ; and

Fifteenth. That even supposing the insurrection in Cuba to be terminated *materially* without resort to certain radical measures affecting slavery, the return to the sugar plantations and farms of the many negroes who, since 1869, have been fugitives, or joined to the insurgents, would be a continual motive of sanguinary disturbances and conflicts of every kind.

The Cortes are prayed to proceed to the discussion and passage of a definitive law for the abolition of slavery in Cuba.

MADRID, June 1, 1873.

FERNANDO DE CASTRO.
GABRIEL RODRIGUES.
JOAQUIN M. SANROMA.
RAFAEL M. DE LABRA.
MANUEL RUIZ DE QUEVEDO.
FRANCISCO GINER.
F. DIAZ QUINTERO.
SALVADOR TORRES AGUILAR.
LUIS PADIAL.
MANUEL REGIDOR.
RAFAEL CERVERA.
LUIS VIDART.
BERNARDO GARCIA.
FELIX DE BONA.
ANTONIO CARRASCO.
FRANCISCO DELGADO.
RICARDO LOPEZ VASQUES.
JULIO VISCARRONDO.
J. F. CINTRON.
M. PADILLA.

No. 411.

General Sickles to Mr. Fish.

No. 649.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 11, 1873. (Rec'd July 31.)

SIR : Learning from the colonial secretary, in the course of a conversation about the case of Mr. Criado, that the government had under consideration a decree modifying the action of the authorities in Cuba, respecting embargoes, and restoring certain embargoed estates to the widows and children of deceased proprietors, I suggested to the minister the expediency of a more comprehensive measure, that should at least include an additional article revoking all embargoes decreed against the property of the citizens or subjects of foreign states. For the information of Mr. Suñer, I sketched a narrative of my negotiations with former cabinets on this subject, pointing out the difficulties which this govern-

* *Coartado da*.—An adjective applied to the male or female slave who has agreed with the owner upon the sum to be paid as ransom, and who has already paid him a part thereof, in which case such slave cannot be sold.—*Dict. Span. Acad.*

ment had always encountered in Cuba in the execution of the engagements it had made for the restoration of estates belonging to American citizens.

The colonial minister did not hesitate to evince his disapprobation of the embargo proceedings in Cuba. The government had derived no advantage from them. They had benefited certain private interests at the cost of gross administrative irregularities. And, so far as related to embargoes, decreed by mere executive authority against the property of citizens of the United States, he agreed that they were indefensible in view of the seventh article of the treaty of 1795, not to speak of the rules of international law, which prohibited such measures against the citizens or subjects of friendly countries.

Finding Mr. Suñer disposed to consider favorably the suggestion of a general measure revoking all arbitrary embargoes against the property of non-resident foreigners, I lost no time in bringing the matter to the notice of the minister of state. His excellency received my proposition cordially, and assured me he would commend it to the favor of his colleagues. Besides the inclosed correspondence on the subject, I have since had a conversation with Mr. Maisonnave, in which he promised that the measure should have careful and prompt consideration.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

General Sickles to Mr. Maisonnave, (private.)

MADRID, *Tuesday, July 8.*

MY DEAR SIR AND FRIEND: The worthy minister of Ultramar told me last night that the government of the republic has under consideration a decree annulling the administrative embargoes in Cuba. Does it not strike you that it would be opportune to include in that decree an article making such provision as the Spanish government may deem proper for the satisfaction of reclamations growing out of executive embargoes put on the property of foreigners?

I beg you to give this subject some attention, since I am persuaded that the government of the republic wishes to give a just fulfillment to the seventh article of the treaty of 1795, until now almost lost sight of by the authorities in Cuba.

I greatly regret that I have not had the pleasure of saluting you personally in the ministry, and giving you the assurances of the high esteem and consideration which are, as you well know, the sentiments of your sincere friend, Q. B. S. M.

D. E. SICKLES.

[Inclosure B.—Translation.]

No. 649.]

Mr. Maisonnave to General Sickles, (private.)

(Received July 8, 1873.)

MY DEAR GENERAL: I have just read the letter you were good enough to write me to-day, and hasten to assure you that I will communicate its purport to the minister of Ultramar, so that he may make a decision in the matter of which you speak. Be assured that in this, as in everything else, we shall endeavor to animate ourselves with sentiments of the strictest justice, and with the desire to prove to foreign nations how sacred to us are the interests of their subjects.

At the same time I beg to inform you that the minister of war has given orders to the governor of Santander to send the American subject (*sic*) O'Kelly immediately to Madrid.

I improve this occasion to repeat to you the assurances of the distinguished esteem and consideration with which I am your sincere friend, Q. B. S. M.

E. MAISONNAVE.

No. 412.

General Sickles to Mr. Fish.

No. 652.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 14, 1873. (Received July 31.)

SIR: I have the satisfaction to forward herewith a copy and translation of a decree raising all embargoes imposed by executive authority in Cuba, since April, 1869, on property of persons charged with political offenses, and directing the immediate restoration of such property to its owners.

Although assured that this measure was contemplated, I did not allow myself to anticipate its appearance so soon, nor in a shape so well corresponding to the declared wishes of the colonial minister. Indeed, the more I see of Mr. Suñer y Capdevila the more I am persuaded of his sincerity, energy, and diligence. Day before yesterday he presented to the Cortes a proposition extending to Porto Rico unconditionally, and to Cuba with a temporary qualification, the ample bill of rights embodied in the first chapter of the Spanish constitution. I have reason to believe that not many days will pass before he brings forward a radical measure of emancipation in Cuba.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

Decree of July 12, 1873, revoking embargoes in Cuba.

PREAMBLE.

Animated by the principles of strict legality, which form the unchangeable foundation of democratic teachings, and desirous of realizing, in all that pertains to his department, the amplest attainable right, the undersigned minister has endeavored, with zealous care since he entered upon his duties, to give paramount attention to the numerous and important questions which, in their relations to the state of insurrection that exists in a portion of the territory of Cuba, may lead to excesses of authority, arbitrary acts more or less grave, or the employment of force against the personality of the inhabitants, all of which are unfortunately too frequent in the history of all internecine struggles.

Upon undertaking to study these questions, in the fulfillment of one of the first duties of his office, the minister of the colonies found, and could do no less than seek to reform, a state of things, in his judgment, completely anomalous, namely, the existence of a great accumulation of property, wrested from the hands of the legitimate owners with no other formality than a simple executive order, and turned over to an administrative control exercised with great irregularity in the name of the government, to the notable depreciation of the products of those estates, to the injury of the families dependent thereon for support, and to the detriment of the public wealth, whose diminution is the inevitable result of a want of regularity and order, and the absence or withdrawal of individual interests in the control and management of property.

Such a condition of things, besides being utterly at variance with a political system whose fundamental basis must ever be justice, stern, yet considerate, removed from the rancor of party spirit, and foreign to all motives of passion, could lead to no other result than to embitter mutual resentments more and more by the sad spectacle of misery, the more keenly felt as it has been the more suddenly and unexpectedly brought about, and must, moreover, tend to render profitless a great part of the rich soil of the island, and to introduce disturbance and disorder into the system of production, thus interfering with its due development.

The Cuban insurgents, those in correspondence and relations with them, and those who, more or less openly, lend them protection and aid, thus contributing to prolong a cruel, bloody, and destructive war, doubtless merit energetic suppression and exemplary punishment, and the more so to-day when the government of the republic pledges to all citizens of Spain, on either side of the seas, assured and efficacious guarantees of respect for the rights of all, and offers the means of maintaining their opin-

ions and propagating them and causing their ideas to triumph in the only manner in which ideas can triumph in a social structure, raised upon the solid foundations of reason, truth, and right.

But even the need of such punishment can confer upon no government the power to deprive those of its citizens who stray from the right path, of their individual means of support, and to enforce upon their families the bitter necessity of begging to-day the bread that abounded but yesterday on their tables as the fruit of their labor or their economy.

Apart from the foregoing considerations, there cannot be found in international law (*derecho de gentes*) any precept or principle authorizing this class of seizures which bear upon their face the stamp of confiscation; neither under any sound judicial theory is it admissible to proceed in such a manner; nor yet can the exceptional state of war authorize, under any pretext, the adoption of preventive measures of such transcendent importance, and whose results, on the other hand, will inevitably be diametrically opposed to the purpose that inspired them.

In consideration, therefore, of the facts thus set forth, the undersigned minister presents for the approval of the council the following draft of a decree.

MADRID, July 12, 1873.

The Minister of the Colonies,
FRANCISCO SUÑER Y CAPDEVILA.

DECREE.

In consideration of the representations set forth by the minister of the colonies, the government of the republic decrees the following:

ARTICLE I. All embargoes put upon the property of insurgents and disloyal persons (*infidentis*) in Cuba, by executive order in consequence of the decree of April 20, 1869, are declared removed from the date when this present decree, published in the Madrid Gazette, shall reach the capital of the island of Cuba.

ARTICLE II. All property disembargoed, by virtue of the provisions of the preceding article, shall be forthwith delivered up to its owners or legal representatives, without requiring from them any other justification or formality than such as may be necessary to show the right under which they claim its restoration, or for their personal identification.

ARTICLE III. In order that questions growing out of the preceding provisions may be decided with greater accuracy and dispatch, the captain-general, superior civil governor of the island of Cuba, shall forthwith proceed to organize, under his own chairmanship, a board composed of the president of the audiencia as vice-chairman, the intendente of Cuba, the civil governor of Havana, the attorney-general (fiscal) of the audiencia, and the secretary of the superior civil government, who shall act as secretary of the board, having voice and vote therein; and this board shall summarily, and in the shortest possible time, decide upon such applications as may be made by the interested parties, without any other appeal than may be taken to the government of the republic through the colonial ministry.

ARTICLE IV. The board of authorities charged, under the foregoing article, with the disembargo and restoration of property of insurgents and disloyal persons, may, whenever it shall appear needful to the more thorough decision of these questions, consult the board of the public debt, (*junta de la deuda del tesoro*), heretofore charged with the administration of property embargoed by executive order, and may ask and obtain from the tribunals of every jurisdiction, and from all other dependencies of the State, the data and antecedents which may be deemed needful to such decision.

ARTICLE V. The minister of the colonies shall issue the necessary instructions for the execution of the present decree, or shall definitively approve those which may be prepared to the same end by the board of disembargoes.

MADRID, July 12, 1873

The President of the Government of the Republic,
FRANCISCO PI Y MARGALL.

The Minister of the colonies,
FRANCISCO SUÑER Y CAPDEVILA.

No. 413.

General Sickles to Mr. Fish.

No. 664.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 24, 1873. (Received August 16.)

SIR: The following is a transcript of a cable message I had the honor to send you at 2 o'clock to-day:

HAMILTON FISH, *Secretary of State, Washington:*

Minister of finance of new cabinet announced yesterday in Cortes that no reforms would be granted Cuba until insurgents laid down arms. Announcement received with great applause.

SICKLES.

JULY 24.

I am, &c.,

D. E. SICKLES.

No. 414.

General Sickles to Mr. Fish.

No. 668.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 27, 1873. (Received August 16.)

SIR: Last week Lieutenant-General Contreras put himself at the head of a seditious movement in the city of Cartagena, and being followed by a turbulent element common in most Spanish towns, he declared the province of Murcia an independent state, and renounced all allegiance to this or any other government. A considerable part of the troops of the garrison, and the crews of five or six of the best ships in the Spanish navy lying in the harbor, joined the outbreak. Cartagena is a fortified place, and a naval depot of importance.

The government at once took measures to stop the revolt. Among other steps a proclamation was issued denouncing the people on board the war vessels as pirates, and authorizing and inviting their capture by the armed forces of other nations as good prize. I sent a copy and translation of this decree to Admiral Case, commanding our European fleet, and also to Captain Wells, of the *Shenandoah*, the latter supposed to be lying off Malaga.

Our consul at Cartagena transmits to me, under date of 24th instant, a communication addressed to him by General Contreras, and a copy of his reply.

I have the honor to forward herewith copies and translations of these several documents, and the correspondence incident thereto.

It is not supposed that General Contreras can maintain himself many days in Cartagena. He is not distinguished for address or ability in the conduct of his rash enterprises. If he escapes the resentment of his disappointed adherents, and is able to quit Spain for foreign parts, he may congratulate himself, as the government just now is not in the humor to deal leniently with such characters.

A sort of epidemic seems to seize town after town in succession. The symptoms are the same everywhere. Under the influence of the disorder a revolutionary junta is improvised, the militia and the troops fraternize, the authorities are ousted, occasionally the civil governor and the mili-

tary governor join the insurgents, and almost uniformly these officers acquiesce in the movement or leave the place. In Cartagena a thousand or two sailors and soldiers profited by the occasion to have a frolic in the streets. One of the Spanish fleet, the *Vigilante*, commanded by a committee appointed in the fore-castle, put to sea under a red flag, and having visited Torrevieja and levied a contribution of thirty-six thousand dollars, was returning to port when she was overhauled and captured by the German iron-clad, *Friederich Karl*, and taken to Gibraltar. The movement in Cartagena having as usual exhausted its strength in about a week, is understood to be near a collapse.

In Cadiz the volunteers, joined by some regular artillery, made an attack on the adjacent naval station of San Fernando, and were easily repelled, with severe loss. In Malaga a serious collision occurred in the streets between the forces led by rival chiefs, resulting in a hundred killed and wounded. In Seville there seems less disposition to fight, and the consuls are negotiating for terms with General Pavia, commanding a division of the army sent by the government to restore order in Andalusia. In Valencia the resistance is more obstinate, although it can scarcely be prolonged, since General Campos has sent for some mortars to bombard the city, and will open fire to-day if necessary.

The government maintains a firm attitude and is supported by public opinion.

I have, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

MINISTRY OF MARINE.

Decree of July 20, 1873, declaring the naval insurgents at Cartagena pirates.

PREAMBLE.

In the midst of the grave situation through which the country is passing, when an interrupted series of intestinal discords have brought it to its present melancholy condition, a new complication unhappily arises which may be followed by varied and distinct consequences, the more transcendental in that they affect or may affect our international relations.

Several vessels of the navy at anchor in the port of Cartagena, making common cause with the insurgent masses in that maritime department, have set at nought the legitimate authority of their commanders and officers, and in open rebellion against the sole power organized by the will of the Cortes, have put to sea with the purpose of carrying out their criminal designs on the Mediterranean coasts.

The government in consequence cannot allow itself in any way to be held liable for this action, hitherto unparalleled in naval annals, nor permit that, perhaps under cover of party aims of a certain character, these vessels should commit acts of positive piracy which would compromise the dignity of Spain in the eyes of foreign nations, for, according to international law, all vessels are pirates which hold no lawful commission from a government, or carry no legal sailing-papers, and which are not under the command of an officer competently authorized to represent the public forces.

In view of this and of the urgent necessity of attacking the evil at its birth, the undersigned minister has the honor to propose the issue of the following decree.

The Minister of Marine,
JACOBO OREYRO.

MADRID, *July 20, 1873.*

DECREE.

ARTICLE I. The crews of the frigates of the national navy, *Almansa*, *Victoria*, and *Mendez Nunez*, the crew of the steamer *Fernando el Católico*, and of any other war vessel among those in mutiny in the department of Cartagena, shall be deemed to be pirates wherever found in the jurisdictional waters of Spain, or beyond them, by Spanish or foreign naval forces, according to articles 4, 5, and 6, section 5, chapter 6, of the general ordinances of the navy.

ARTICLE II. Commanders of war vessels of powers friendly to Spain are hereby authorized to seize the vessels specified in article I, and to pass judgment upon the individuals composing their crews in the sense expressed in that article, the Spanish government reserving to itself the ownership of the vessels, to be established by the proper reclamations through diplomatic channels.

ARTICLE III. In like manner are declared pirates any other vessels of the national navy, which, being in a state of mutiny and not under the command of officers of the navy, may put to sea from any port of the peninsula.

ARTICLE V. (IV?) The minister of marine is hereby charged with the execution of this decree, and shall communicate to the minister of state for the information of the foreign diplomatic body.

MADRID, July 20, 1873.

The Minister of Marine,
JACOBO OREYRO.

To the President of the Government of the Republic,
NICOLAS SALMERON.

[Inclosure C.]

General Sickles to Capt. C. H. Wells, commanding Shenandoah.

LEGATION OF THE UNITED STATES,
Madrid, July 22, 1873.

SIR: I have the honor to transmit herewith, for your information, a copy and translation of a decree of the government of Spain, dated 20th instant, and published yesterday in the Official Gazette, denouncing as pirates the officers and crews of certain Spanish vessels therein described, and inviting their capture as lawful prize by the armed ships of other powers.

This decree of the executive was yesterday approved by the legislative authority.

You are therefore authorized by public law, and by the express consent of the government to which these piratical cruisers belong, to capture any one or more of them that you may encounter, and take them into port for condemnation.

I am, &c.,

D. E. SICKLES.

[Inclosure D.]

General Sickles to Rear-Admiral Case.

LEGATION OF THE UNITED STATES,
Madrid, July 22, 1873.

SIR: I have the honor to transmit herewith, for your information, a copy and translation of a decree of the government of Spain, dated 20th instant, and published yesterday in the Official Gazette.

The same documents have been sent to Captain Wells, of the Shenandoah, with a letter, of which a copy is inclosed.

I am, &c.,

D. E. SICKLES.

[Inclosure E.]

Mr. Molina to General Sickles.

CONSULATE OF THE UNITED STATES OF AMERICA,
Cartagena, July 24, 1873. (Received July 25.)

SIR: I beg to inform you with reference to the political movement of this town, as mentioned in my last communication of the 13th instant, that the iron-clad ship Victoria left this port to pronounce Alicante in the morning of the 20th instant, having returned on the 22d, without any particular news further than they had seized the Spanish gunboat Vigilante. The member of parliament, Antonio Galves Arce, the chief of the movement, went on board the Vigilante to Torre Vieja for funds, and in coming into port yesterday morning was seized by the Prussian iron-clad ship Federico Car-

los, (*Friederich Karl*,) mounted with sixteen heavy guns, and commanded by Captain Werner. This has been done on the strength of the decree issued by the Spanish government declaring said vessels to be considered as pirates. The *Vigilante* was immediately manned by a Prussian crew, and hoisted the Prussian flag, and the Spanish crew were retained by the Prussians. Immediately the news came on shore the whole of the town was in a most alarming state, and actually many threats were given to the Prussian consul, who had to go on board of his vessel with his family.

General Contreras summoned all consuls of this locality to inquire if we had received any instructions from our respective governments to hostile vessels belonging to, as they term themselves, the *Canton Murciano*, to which we all answered in the negative. Then he appointed a deputation, composed of the members of parliament, Sanvalle, Caravajal, and some members of the *Junta de Salud Publica*, to go on board of the *Federico Carlos* and arrange matters. This was at once done, and the result has been, that they, together with Galves, came to the conclusion, and signed an act to the effect, that the *Vigilante* was legally seized, not having on board any official documents nor crew, in consideration of which Galves and his crew were left at liberty, together with the funds they had, and the *Vigilante*, under the Prussian flag, left yesterday afternoon for Gibraltar.

The Prussian consul leaves to-day for Madrid, with the act signed in proper order.

I herewith inclose a copy of a communication received from General Contreras, who calls himself commander-in-chief of the army and navy of the federal republic of the *Canton Murciano*.

In consequence of the before stated, and as very likely we will be called again, I beg you to give me full instructions how to act.

I am, &c.,

CIRILO MOLINA Y CROS.

[Inclosure F.—Translation.]

General Contreras to Mr. Cirilo Molina.

(*Appendix 1.—Mr. Molina's letter.*)

FEDERAL ARMY, CANTON OF MURCIA.

I have the honor to transmit the accompanying note to you as the representative in this port of the government of your nation, in order that you may be pleased to give it due course, and requesting you to kindly acknowledge its receipt.

Health and federation.

CARTAGENA, *July 23, 1873.*

The General-in-chief,
JUAN CONTRERAS.

To the UNITED STATES CONSUL.

[Inclosure G.—Translation.]

Circular of General Contreras to the consular body in Cartagena, dated July 23, 1873.

[*Inclosed with appendix 1, Mr. Molina's letter.*]

The Constituent Cortes having proclaimed the federal republic as the form of government of the Spanish nation, the people looked for the fulfillment of that solemn pledge with all the speed that their anxiety and their enduring efforts in the cause of federalism merited, and on beholding a month and a half pass by without either the Cortes or the government performing even the most insignificant act in favor of the speedy establishment of the federal cantons, the Spanish provinces wherein the liberal spirit has ever attained, its highest development erected themselves into cantons without thereby entirely refusing to recognize the powers of the Constituent Cortes.

One of the provinces, that of Murcia, joined to its declaration of cantonal independence the naval forces of this port and a portion of the army, and with these tendered her aid to the spontaneous movement begun in the neighboring provinces, when she was surprised by the decree of the central government declaring the sailors who had joined the people pirates, and invoking the aid of foreign powers to prevent the people from realizing the fulfillment of the solemn constitutional enactment.

The committees (*juntas*) of the Murcian canton cannot believe that the powers friendly to Spain will intervene in a pending question between two political groups

which as yet have not declared mutual hostility. They cannot believe that the navies of enlightened nations will come to interfere in differences involving no great or transcendental issues for the future, when in other civil struggles, disastrous in their effects and protracted in their duration, no intervention has taken place. But our position demands a declaration of the fundamental facts of the present movement, not by way of convincing foreign powers, but as a refutation of the bases on which the forces of friendly nations might rely for intervention in our acts.

The attitude of the Murcian canton, like that of the others proclaimed in Spain, is sustained and justified by sixty representatives of the nation holding seats in the Constituent Cortes. And there, where the sovereignty of the people is embodied in the three hundred and fifty-eight deputies legally proclaimed, the attitudes of our cantons cannot well signify a transcendental crime when a fifth part of the representatives of the nation justify our acts.

Seven of them are now in this canton, legalizing by their presence all that is done here. Five are in the neighboring canton of Valencia, who authorize the realization of the constitutional resolution, and all who, both in Madrid or in the provinces, have made declarations favorable to the immediate organization of the cantons are ready to sustain them on all occasions.

If, therefore, a simple question of procedure separates the cantonal authorities from the system established by the Cortes, can this be an adequate motive to call forth a declaration of civil war against whole provinces animated by the memory of the energetic struggle of eighteen hundred and eight in the cause of our independence?

The cantonal committee has declared treasonable the executive power of Madrid, or its decree of foreign intervention.

The Spanish federation holds the fortified cities of Cartagena and Cadiz, and of Marcia, with the important cities of Seville, Valencia, Alicante, Jaen, Granada, and a multitude of the intervening towns, and therefore we have a right to demand that our acts be respected.

On the other hand the cantonal authorities have the full assurance that foreigners resident in the territory, under their jurisdiction, shall not be molested in the least degree, and pledge themselves to give them assurances for the future, because not only has the present prudent movement given rise to no acts of disturbance, and still less of bloodshed, but also because it has been an unequalled example of wisdom and moderation.

To the cantons belongs the right to ask for the fulfillment of the constitutional resolution. Justice is on their side because the cry raised by the people in aid of the government that convened the Cortes is now repeated by the cantons; and, lastly, abundant reason is on their side when they demand respect and consideration from foreign powers because of the proportions of the movement, the order with which it has been realized, and the facility with which all the authorities of the cantons continue in the full exercise of their powers.

Founding his action on these considerations, the undersigned, captain-general of the federal republic of Spain, general-in-chief of its army and navy, fully authorized by the first temporary authorities thereof to treat with the representatives of foreign powers, requests them to suspend the action they are called upon to execute by the decree of the government of Madrid of the 21st (20th) instant, and to maintain meanwhile all customary consideration toward the constituted authorities of the cantons of the Spanish federation.

I wish for you many years of life and prosperity for those you represent.

JUAN CONTRERAS.

CARTHAGENA, July 23, 1873.

[Inclosure H.—Appendix to Mr. Molina's letter.—Translation.]

Mr. Cirilo Molina to General Contreras.

CONSULATE OF THE UNITED STATES IN CARTAGENA.

GENERAL: I have received the communication you are pleased to address me under to-day's date, accompanied by a document which you request me to transmit to my government, which I hasten to do forthwith. Up to this time I have received no communication from my government concerning the decree of the minister of marine, of date 20th instant, published in the papers, and to which you refer in your communication.

Until either I or the commanders of the war vessels of my nation receive instructions, you may rest assured of the amplest neutrality on my part.

Receive, general, the assurances of my most distinguished consideration.

CIRILO MOLINA Y CROS.

No. 415.

General Sickles to Mr. Fish.

No. 672.]

UNITED STATES LEGATION IN SPAIN,
Madrid, July 31, 1873. (Received August 21.)

SIR: After my conversation with the minister of state on the 24th instant, I found an opportunity to discuss colonial policy with Mr. Carvajal, the minister of finance, an influential member of this cabinet. I will not trouble you with a recital of the argument since the conclusions seemed satisfactory. Mr. Carvajal assured me of his own hearty sympathy with the advocates of reform in the Antilles, and he added that Mr. Salmeron, the president, shared the same views. And after a full and frank interchange of opinion Mr. Carvajal suggested a further conversation with the president, with whom he kindly undertook to arrange an appointment.

Inclosed with this dispatch I forward official reports and translations of the debates of the 23d and 26th instant, respectively. In the latter you will see that a more mature reflection, aided possibly by the evidence I had furnished of the unhappy impression made by the policy announced on the 23d, has led to the modified attitude shown in the remarks of ministers in the subsequent discussions.

These impressions are confirmed by the action of the Cortes on the 28th, approving Mr. Suñer's bill for extending to Porto Rico the ample bill of rights found in title first of the Spanish constitution. Further corroboration is afforded by the favorable reception given to the amended constitution reported by Mr. Castelar from the committee of twenty-five, in which it is proposed that Cuba and Porto Rico come in as States on an equal footing with the other members of the federation.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

Extract from the debate in the Constituent Cortes July 23, 1873, on the bill empowering the government to levy forced contributions on reputed Carlists.

Mr. ROMERO ROBLEDÓ.

I shall add one more argument in conclusion. I should like to know how a contradiction is to be avoided in this proceeding on the part of the republic. To-day a forced contribution is levied upon those who aid the Carlists, while only the other day the estates of the Cuban insurgents were released from embargo and restored to them. [Mr. Betancourt interrupts the speaker.] Mr. Betancourt may say what he chooses, but it is the truth. The Carlists are enemies to liberty and modern progress, but after all they cry "Long live Spain!" We shall fight them and conquer them. And yet they do not attack the integrity of the nation. On the contrary, the Cuban insurgents, when all manner of reforms were offered to them, after the revolution of 1868, rebelled at Yara to the cry of "Death to Spain!" And when the republic was proclaimed, on the 11th of February, all sorts of offers were made to them, and it was thought the war would come to an end; but they only cried out the louder "Death to Spain!" That is to say, the Carlists, although the defenders of an abhorred cause, are our brothers and do not combat our nationality, while the others hate us and proclaim the extermination of our race. How, then, can you explain this contradiction? You cannot indorse such a discrimination which only favors the enemies of Spain. The government and the assembly must weigh this well. I have done.

The MINISTER OF FINANCE.

Mr. Romero Robledo assumes that there is a contradiction between our conduct toward the Cuban insurgents and toward the Carlists because the restoration of the property of the former has been ordered. I am the first to be indignant at the attitude of a portion of the inhabitants of the island of Cuba, more blinded, per-

chance, by the continued absence of political liberty in harmony with their material status, than by any real need of independence; but is there anything in common between what is done to the insurgents in Cuba and what is done to the Carlists? The estates of the Cuban insurgents were not confiscated, but embargoed. Many persons hold that it is expedient to seize the enemy's property, a principle repugnant to civilization, which nevertheless we have seen put in operation in our own time. Embargoes are contrary to the purpose in view, for they diminish the public wealth, and under this point of view we decided to restore to their owners the many estates now going to ruin. But has this anything to do with a war tax? It has been said that as an injury or punishment such measures may be taken toward communities. Experience shows their absurdity as a punishment, and therefore we employ them as an injury, establishing war taxes. We have applied the simple proverb which says, "*Who breaks, pays.*" Those who break the national unity, those who break liberty and progress, should pay the damage they inflict upon the country. "*Who breaks, pays.*" The Carlist, then, must pay.

Mr. BERTANCOURT. It was very far from my purpose to take part in the discussion, and I only do so because, having been alluded to by Mr. Romero Robledo, I was forced to interrupt him. If all those who speak here for the first time implore your benevolence, I fancy I need it more than any of the deputies I have yet heard. Your lips wont to express all the inspirations of patriotism, know all the riches of the beautiful tongue of Castile, while I have had to make a special study of forgetting even the very language of a certain class of feelings, the most natural and most generous of the soul, and whose simple enunciation has hitherto sufficed in Cuba to draw down exile or martyrdom on my fellow-countrymen.

I look upon this palace as the hearthstone of the great family of Spaniards. Here we are all assembled to discuss our most sacred interests, the interests of the country. You know the outgoings and incomings of it; you are as though in your own house. But I am a stranger here. From my childhood I have been told that these doors were closed to Cuba; that my brothers had been expelled hence unjustly and ignominiously, and I learned to believe that you would never heed our rights until we should be received into the bosom of this family and called to partake of all the rights possessed by our brethren of the peninsula. Just now, therefore, on hearing, when I least expected it, Mr. Romero Robledo compare the embargoes put upon the Cubans with the war contribution it is proposed to levy on the Carlists, I could not help exclaiming in an undertone to my friend Mr. Corchado, "*Ya parecia aquello!*" And, with my usual frankness, I shall explain these words. I had received information from Cuba that Mr. Romero Robledo would come before you for the express purpose of speaking on the colonial question; and as, in my opinion, he dragged the question most inopportunistically into this debate, I expressed my opinion about it to Mr. Corchado.

Mr. Romero Robledo has hinted that everything was permitted to the Cubans because they raised at Yara the banner of "Death to Spain," and I now rise simply to give a plain statement of the facts. Gentlemen, what the Spanish people did in Cuba on the 10th of October, 1868, was the same as had been done in the peninsula in September of the same year, when the standard of liberty was raised against the tyranny of the old *régime*. And the truth of this is proved by the fact that as soon as the Cubans knew of the downfall of the throne of Doña Isabel II, they asked Captain-General Lersundi to convoke a junta, which was done, and when it met, Messrs. Modet and Meestre asked that a telegram should be sent to the peninsula stating that the Cubans supported the movement of their brothers in the peninsula, and aspired to the enjoyment of all the liberal conquests of the revolution.

The reply was in the sense of a postponement of all reforms, so that it was soon seen that the conquests of the revolution were not for Cuba. Thus three months passed by until Mr. Lopez de Ayala, approving the stationary policy of General Lersundi, by his last telegram shattered the remaining hopes of the Cubans. Nevertheless, when General Domingo Dulce arrived at Havana, another junta was held, and the insurgents of Camaguey, with one single exception, agreed to lay down their arms if in reality liberal reforms were given to Cuba.

The VICE-PRESIDENT. I beg that you will confine yourself to the matter under debate.

Mr. BERTANCOURT. A most serious charge has been made against Cuba, and I wish to set the facts right.

MANY DEPUTIES. Let him speak!

Mr. BERTANCOURT. I was saying that in the junta held at the plantation of Clavelinas, all those present, with but one exception, voted to accept their liberties and lay down their arms to attain this end. And this is shown by a celebrated manifesto published in the journals of Havana when General Caballero de Rodas was in command. Afterward General Dulce named commissioners to confer with the Cubans. And what happened then? That the insurgent chief, Don Augusto Arango, being charged with carrying to Puerto Principe the basis of an arrangement, was treacherously assassinated by the volunteers, it was said, at the very entrance to the city, while upon his

body was found the *gaceta* containing his pardon by General Dulce and the basis of the agreement or compromise.

In another junta held in the house of the Marquis of Campo Florido, in Havana, it was likewise agreed that if Cuba were granted the right of antonomical government peace and happiness would soon be restored to the island.

This resolution so exasperated the volunteers that they thereupon decided to crush the Cubans to prevent their union; and then began the assassinations of Villanueva, of the Louvre, and even in the streets, which resulted in the flight of the native islanders and the embargo of their property. And thus it came to pass that the liberals, who were preparing for the election of deputies, fled terrified on seeing that Spain did not force the volunteers to respect her will. From that time the jails were crowded with Cubans, and the papers were filled with lists of embargoed estates without any procedure or form of law, but by executive orders. Such are the embargoes so justly annulled by Mr. Suñer.

I have heard with pleasure the minister of finance distinguish between embargoes imposed as a punishment, and therefore indefensible, and enforced war contributions. It is evident, therefore, that property embargoed by executive order is illegally and arbitrarily held, and for this reason Mr. Suñer ordered its restitution; it is evident that there is no relation between those embargoes and the war tax now under discussion, a tax which Cuba also supports without complaining.

But there is more to be done in this question of embargoes. In Cuba the government still holds innumerable estates belonging to the mothers, widows, and orphans of insurgents condemned to death by military or other courts, and who have perished on the scaffold or on the field of rebellion; and is it possible, gentlemen, that the republic can sustain such measures a single day longer?

I think I have said enough to demonstrate that the Cuban insurgents have not raised the standard of "Death to Spain!" That they have only desired and still desire the liberties and reforms you have here, and that, as these have never been granted them, it is unjust to charge them with ingratitude. What franchises in point of fact have been given to Cuba? What reforms has the republic essayed? Until now, nothing save the promises of Mr. Pi y Margall in his executive programme, and the disembargo of the property embargoed by executive order; which last is due to the uprightness of Mr. Suñer's principles during the few days he filled the ministry of ultramar.

Mr. Romero Robledo, therefore, has no grounds for saying that the insurgents chose the moment when reforms were given to them to break into open rebellion. No! The Cubans have been waiting for thirty years, and are waiting still; and if Spain carries thither the liberties enjoyed in the peninsula, I have the firm belief that Cuba will remain to Spain! [Applause.]

MR. ROMERO ROBLEDÓ. I regret that your applauses hamper me somewhat at this moment, for Mr. Bertancourt has with great adroitness made an argument in favor of the Cuban insurgents, and arraigned the revolutionary Spain of 1868 and the republican Spain of to-day. Mr. Bertancourt, who says that by reason of his sufferings he has learned nothing, knows enough to put himself, as no one else could have done, in the position best adapted for dealing the strongest blows.

He has said that on asking why there were no representatives from Cuba here he was answered that they had been expelled in 1837; and those who answered him thus answered him wrong, since they should have replied that Cuban representatives were absent from the Spanish Cortes because Argüelles, Sancho, and Calatrava, patriarchs of the liberal party, deemed that they should be absent, for they had taken seats in the previous Cortes and sold their country, and then demanded the reward of the speeches they had made and the boasts they had uttered. [Rumors.] I do no more than repeat what Agustin Argüelles said in the Cortes of 1837, resulting in the denial then of representation to the Cubans.

Moreover, I do not understand how I compelled Mr. Betancourt to ask the floor, interrupting me, when I spoke of the insurgents, by saying, "*Ya aparecio aquelló,*" since neither he nor any one else needed intelligence from Cuba to know that I would defend in this parliament, as in any other to which I may be sent, the interests of Spain in the colonies; in doing which I am no more than faithful to my antecedents.

He says I have brought a groundless charge against Cuba. This is not correct. I incriminated the rebellious and ungrateful sons of Cuba who are fighting against Spain. The question of the insurrection must not be confounded with that of the reforms offered by all the governments before and since the revolution. Mr. Betancourt says that the rebels continue in rebellion because reforms have not been given them, but in reality they get no reforms because they will not lay down their arms; and reforms are not to be demanded by armed force. The rebels of Yara rose to the cry of "Death to Spain!" and that is still their cry. And when you speak to them of reforms, and offer them the republic, they answer through their official papers in New York, that they wish from Spain neither liberty nor the republic, they will accept nothing!

Consequent the conduct of those insurgents is not to be excused, nor the policy of

Spain impugned. I have ever resolved that whenever an incident arises here concerning this unfortunate question, there should be at least one person to raise his voice in favor of the Spanish Cubans, and against the insurgents and traitors, who, while begging reforms, really seek to rend the heart of the nation.

General Dulce gave them all manner of liberties—[Interruptions from the left.] It is difficult to speak in the midst of these interruptions. Is it or is it not true, that General Dulce went to Cuba because his being in command there was a guarantee that reforms would be asked for? Gentlemen, this is notorious. I have in my possession a letter from General Dulce, a letter I will show to anyone who wishes to see it, in which he tells me that he had become fully convinced that the cry for reforms was a mere pretense—a mask—and what they wanted was independence, and nothing else. [Mr. Labra addresses a few words to the orator in an undertone.] Those who interrupt me would do better to ask the floor, and for that purpose I now allude directly to Mr. Labra. [Mr. Labra asks the floor.] I am in no way under pledges; my position here is perfectly clear, and I proclaim it frankly: I am with the republic in everything if it be necessary to the salvation of liberty and the country; I am ready to die with you while your sole guide is the integrity of the nation; but never will I be with those who seek the dismemberment of my country. This is a national question which ought to affect us more deeply than mere internal bickerings.

The minister of finance, seeing the impossibility of demonstrating the justice of the law now under consideration, has said very plainly that the motive of this measure lies in the fact that the government presented a law against the republicans a few days ago, and so it is now necessary to bring forward another against the Carlists. But I maintain that there is no equality in the two cases; and I may now add that, according to the principles he enunciates, quoting the proverb, "Who breaks pays," the minister should lose no time in submitting a bill proposing that all the republicans should pay for all the damage they have done in all their insurrections. This is not just; political parties are not to be subjected to penalties of this kind, for in such case we would all be exposed to the *lex talionis*, since we are not eternal in our rule.

The minister speaks of the laws of war. I have heard with sorrow the application he proposes to make of these laws to civil warfare. I fancy that none of the writers on international law he may have consulted establish a parallel between a war among nations and an internal insurrection, which we should not even confess to be a war.

If the foreign powers were to recognize the Carlists as belligerents to-morrow, in accordance with the minister's doctrines, how could the government protest when it could be answered in the very words of the finance minister? His excellency, in speaking of embargoes and of war contributions, tells us that the latter recognize property-rights. So do embargoes too. And he adds that the embargoes have been raised because they were detrimental to the public fortune. This is no argument; I am not discussing the question of embargoes. What I say is, that the insurgents who belong to the New York junta, and who say that they would like to know in which of their veins Spanish blood runs so that they might open it, have had their property restored to them, while a contribution is levied on the Carlists. This is a contradiction; and I repeat that you should not impose a contribution on a particular party because it is equivalent to making a law of caste.

THE MINISTER OF FINANCE. A distinction must be made between a state of warfare and a character of belligerency. The government, the chamber, the country, and the facts of the case may give rise to a state of war, and yet one of the parties may not be a belligerent. I believe that we are in a civil war, but this does not involve myself, or any one else, conceding a belligerent character to the Carlists. This depends on the conditions of the war and on other principal and accessory circumstances which are perfectly well known to the honorable gentleman. And so it cannot be inferred from my language that I deem the Carlists entitled to recognition as belligerents either by ourselves or by foreign powers.

MR. LABRA. I have no intention of making a speech on the grave question inaugurated by Mr. Romero Robledo, but when the problems are vast, and the difficulties that burden our minds great, I think that they should be made the subject of a special debate, in which theories may be brought forward and abstract facts set right with respect to a political question like that of Cuba, and with respect to a legal question like that of colonial reforms. I do not wish to disturb the course of the debate. If Mr. Romero Robledo is justified in saying that interruptions make discussion impossible, it is incumbent on me to explain why I interrupted him, adding that in my judgment it is also impossible to discuss when gratuitous assertions are made on the part of one of the contestants. This is both a question of fact and a question of judgment, and it is incumbent on me to oppose a distinct protest to the assertions of Mr. Romero Robledo.

He says that the insurrection in Cuba was from the outset in the interest of separation, and that its development has continued in this same sense up to the time when Mr. Suñer issued his decree concerning embargoed property in favor, as has been here said, of the very persons who form the insurgent junta in New York. The two

extremes are false. The decree in nowise refers to that junta, since it only affects property embargoed by executive act, and not of estates sequestered by a judicial decision. Neither was the insurrection of Yara secessionist at its outbreak; still less is it true that General Dulce proclaimed in Cuba in 1868 the liberties of the Peninsula.

I do not understand how Mr. Romero Robledo invokes the decrees of General Dulce, since they introduced no reforms. He only issued two decrees: one concerning the liberty of the press, with two lamentable restrictions, first, that nothing could be said against religious unity—which was bad enough, since in Cuba religious liberty has existed *de facto* for a long time; and second, the prohibition of attacks, not on the integrity of the country, but on slavery! And thus it was permitted to attack the national integrity, but forbidden to attack that to which no civilized nation now consents. The second decree of General Dulce recognized the right of re-union but limited its exercise solely to the voters; that is to say, he revived the decree issued by Mr. Vaamonde (*Bahamonde*, as it is more generally spelled,) in 1864, and which led to the retirement of the *progressistas*.

I had occasion at that time to speak with General Serrano and Mr. Ayala, who said to me that public order in Cuba would not be disturbed by sending General Dulce thither, and I told them that they were mistaken, and that General Dulce's appointment was insufficient to repress the insurrection. Moreover, in all the history of America it has been observed that while the first movements of colonies have never been toward separation, the second and subsequent movements have always been secessionist; and this is not to be wondered at, since it depends on the radical difference of status between the colonies and the provinces of the mother country. In the present insurrection I have always condemned the idea of separation, for I think it prejudicial to colonial autonomy. It is certain that if the insurgents had laid down their arms, or would lay them down as I had advised, the Cortes would concede that autonomy, and Cuba would obtain all the advantages of liberty without separation from the mother country.

I am fatigued, and taking up the time of the chamber, and so I will conclude by saying that we are discussing a question of facts, and I defy Mr. Romero Robledo to prove his assertions.

MR. ROMERO ROBLED0. It is proper that I should expose the error into which Mr. Labra has fallen in saying that I provoked this debate on the colonial question. I simply adduced an argument applicable to the bill under discussion, and an impatient deputy, doubtless to provoke this question, interrupted me. Not only have I not originated this colonial discussion, but, in the interpellation I had the honor to explain a few days ago to the chamber, notwithstanding that several deputies had taken up this question, I deliberately avoided touching upon it for fear that affirmations would be made contrary to my own convictions, and knowing this to be a question not to be taken up incidentally. This has been my course on the colonial question, notwithstanding Mr. Navarrete took it up rather ill-advisedly and mistakenly, in my judgment, and notwithstanding, also, that Mr. Suñer, then minister of the colonies, uttered words I could not approve.

Mr. Labra denies Mr. Dulce's reforms, and between my affirmation and his negation the public mind cannot but be perplexed; but a time will come for ample discussion on this matter, and then it will be seen whether General Dulce did or did not grant reforms. I shall read the journals published at that time in Cuba, and then we will see the effect certain of their articles will produce on Spanish ears.

With respect to the last fact we will debate it too; and if Mr. Labra asks for proofs I guarantee to show him that the Cortes of 1837 closed their doors to the American deputies because of the perfidious and traitorous conduct of their representatives in previous Cortes; for, as Arguelles said, they had even demanded the prize and reward of the speeches they had made, and which, they claimed, had aided the independence of the American colonies. I shall adduce proofs of this, and meanwhile Mr. Labra is at liberty to persevere in his denial.

As to the rest, why should I weary you? It is said, "When a party confesses, proofs are needless." I applaud Mr. Labra's patriotic words, and his vehement desire that the rebels should lay down their arms. I rejoice that Mr. Labra and Mr. Betancourt differ, as it is a difference we all appreciate; but the truth is that Mr. Labra has said to us that the Cuban insurrection is separatist in its character. Is not this what he said? You all know it; the Cuban rebels are separatists, and I, as a Spaniard, addressing a parliament which is also Spanish, tell you that the insurrection is kept up by a few ingrates, an insignificant minority, as is shown by the fact that during the four years they have been in arms under the protection of the United States they have never been able to seize a single town. It is therefore our duty to support the majority in Cuba, and to uphold their rights.

MR. BETANCOURT. Mr. Romero Robledo says that it is not he who has raised this question about Cuba, but my impatience. The truth is that nothing was more out of my path than the idea that the colonial question could be brought into a debate on a question of finance. And that is why, when Mr. Romero Robledo dragged it in, I, ad-

addressing Mr. Corchado in private conversation, could not resist saying in an undertone, "*Ya pareció aquello!*" (There it is at last.) Mr. Romero Robledo thereupon addressed me, telling me I ought to ask the floor. I did so; and that's the whole story. Afterward I stated, in explanation of my remark, that I had heard that Mr. Romero Robledo was engaged to take up the Cuban question in this parliament. It was not I, therefore, who provoked this incident, but Mr. Romero Robledo. This is perfectly clear. The honorable gentleman was, doubtless, impatient to fulfill his pledges, and it was in reality he who brought the matter into this debate.

I shall not take up the words "perfidious, vile, and traitorous," used by the honorable gentleman in speaking of the insurgents. I shall only say that the men of the old *régime* who carried tyranny to Cuba were the only ones well acquainted with the art of making traitors. When all the paths to liberty are shut for a people—and you yourselves, republicans, have most unmistakably proclaimed that they are shut—the right is on the side of that people if they resort to the only appeal left to them, the appeal to force.

Mr. LABRA. Mr. Romero Robledo says: "Mr. Labra asks me for proofs of a certain fact, and I will give them to him," and, remaining silent with respect to the proofs I explicitly demanded, he offers me other proofs I did not ask for.

He has spoken of several topics, and among others the attitude of the American deputies in the Spanish Cortes. I have not denied that Mr. Arguelles said what Mr. Romero Robledo says he said; what I have denied, or would have denied, is the fact that such was their attitude; and it would be most absurd if, when a historical fact was mentioned and proof thereof demanded, the words of such and such a historian were cited as sufficient proof.

The honorable gentleman has spoken to us of the Cortes of 1837. I know that the deputies from Cuba and Porto Rico were expelled from those Cortes, but by a small majority, for opposed to Mr. Arguelles were other men not less illustrious than he, like Caballero, Quintana, and others, who stood up for the rights of those colonies.

In order to convince the assembly that the expulsion of the American deputies from the Spanish Cortes was due to their perfidy, Mr. Romero Robledo has adduced arguments of much authority. But I in turn can oppose to these arguments those of the persons who fought against that resolution. Moreover, all the world knows the motives and passions which led Mr. Arguelles to make those speeches, and I can prove that there were American deputies who gave great examples of patriotism and love for Spain.

And now I turn to my second correction, also brief. The deputies from America in the legislature of 1811 gave due notice to the government that if reforms were not carried into effect, the separatist movement would triumph. This can be shown from their motions and speeches. Mr. Romero Robledo with some ability made use, as an argument in his favor, of an explanation I had proffered. I said that in colonial history all insurrections bore a separatist character in their second stage, and this would have been the case with Cuba and Porto Rico had there been previous insurrections, as however there were not; and Mr. Romero Robledo says: "When a party confesses, proofs are no longer needed." But I added that it is the duty of statesmen, firstly, to prevent insurrections from reaching that stage; and, secondly, when it is reached, to put down the insurrection. That of Cuba is in its second stage, and yet it is still possible to effect political reforms there like those in Canada, and Cuba will then remain under the dominion of Spain.

Mr. ROMERO ROBLED0. I shall be extremely brief in my replies. To Mr. Labra I shall simply say that since the rebellion in Cuba is in its second stage, let us first overcome the rebels and then we will discuss reforms. Mr. Betancourt asks me what my desires or pledges are respecting colonial issues. I have no other desire than to behold the triumph of the Spanish flag, nor other pledges than those imposed by my conscience and my patriotism. I am not a deputy from those provinces. I have therein neither interests nor passions, nor any kind of aspiration incompatible with my country's good. And Mr. Betancourt—what pledges does he obey? Because when he supposes that I am under pledges he leads me to suspect that he himself may be so bound. I therefore repel his question, and address him another in the self-same terms.

Mr. BETANCOURT. When I said that Mr. Romero Robledo had treated the Cuban question as he was accustomed to treat it, I did not deem I was speaking of desires and pledges in the sense in which he has understood me. If there be any pledges he must know it. I shall now give the pledges I contracted on taking my seat here. I did not seek to be a deputy. I was spontaneously elected from Porto Rico, which thereby wished to confer upon me an honor which I endeavor to deserve. Moreover, all the pledges I have are these: obey the sentiments of my heart, the love I bear to my country, and justice and liberty, ever wounded by the lips of Mr. Romero Robledo when he takes up the question of the Antilles.

Mr. ROMERO ROBLED0. I do not wish Congress to be impressed by any reticence on my part with respect to pledges I may have contracted regarding the colonial question. And I only know that when the insurrection of the traitor Lopez took place, the Betancourts and the Agüeros rose with him.

The MINISTER OF FINANCE, (Mr. Carvajal.) With a melancholy facility we have strayed away from the question under discussion. Nevertheless, Mr. Betancourt has made a remark I cannot pass over in silence. He says that the people of Cuba had a right to rebel under former governments, which has most harshly censured. Without disputing this insurrectionary right, which, in my judgment, can only exist in extreme cases, I must say that the government to-day considers the Cuban insurrection as criminal as that of the Carlists or of the *Intransigentes*; [Good! Good!] that it will hold it the more criminal in proportion as the Cubans know that this government stands ready to give them all manner of liberties as soon as they lay down the arms wherewith they endeavor to extort them from us; and that while arms are in their hands we cannot give them those liberties. [Marks of approval.] Mr. Suñer's bill is intended to say so distinctly. Under this point of view it is evident, therefore, that the government should dispel the possible effects of Mr. Betancourt's words addressed to the assembly, which is before all Spanish, and to a government whose mission is to defend the national integrity, and to make this question one with the development of our liberties on every foot of national soil. [Applause.]

But let us define the principal basis of the question now being ventilated. I have maintained that the bill under discussion tends to soften and modify in the interest of civilization and progress all that is hard, severe, and energetical in the necessities of warfare. The Roman precept, *adversus hostem æternas auctoritas esto*, is now abolished and separated from the same condition of warfare under which it was first established, but there is a general principle which we cannot lose sight of—that war should be paid for by the enemy. In barbarous times this was done by confiscation of property and person; in the present century it is effected by means of contributions. But in a state of war such exactions are enforced by arbitrary proceedings, such as the Carlists now employ, and we cannot face such a situation without weapons. For this reason, let us modify and regulate this state of things by means of law, giving to the popular corporations this natural right, and thereby fix the mode in which the war is to be paid for by the enemy.

Guided, therefore, by a principle more civilized than arbitrary, we have presented this measure with perfect independence and uprightness. Amendments are coming in from all sides of the chamber, and, in view of this, the government leaves the house free to adopt with respect to the bill under debate such resolution as it may deem most expedient.

Mr. BETANCOURT. I am very well aware, Mr. Minister of Finance, that I am not here in a Cuban parliament. How could I be ignorant of it on seeing that Cuba has no representatives here?

The VICE-PRESIDENT, (Mr. Pedregal.) Although I regret to do so, I must notify you that you are limited to making a correction.

Mr. BETANCOURT. I am endeavoring to correct an erroneous impression as to what I said. I am a representative of the Spanish nation, and as Cuba is a part of Spanish soil, I hold that it was my duty to defend that island. As for the statement that the Cuban insurgents will have no liberties as long as they do not lay down their arms, I shall reply in the words of one of the most authoritative representatives of the republican party, who said: "The Cuban question is a faulty circle of reasoning; Cuba waits for liberties to be given her before laying down her arms, and Spain waits for the insurgents to lay down their arms before giving them their liberties." The minister of finance says that the insurgents are without excuse, because they do not abandon their arms in view of the offers of liberties now made to them. Offers have been made to them since 1837; Cuba wishes the fulfillment of these promises, and, if after their fulfillment, the insurrection continues, then, and then only, would you have the right to say to her: "Thou art a traitor to the mother country!"

The MINISTER OF FINANCE. In saying to Mr. Betancourt that the republic has given to Porto Rico all our liberties, an answer is given to him and to this insurrection which has not a single explanation, in whose favor not a solitary voice can justly be raised, and against which all of us will rise together, for we are determined that it shall cease. While the actual government exists, as also while that of which Mr. Suñer was a minister lasted, no notice will be taken of the demands of the insurgents in Cuba as long as they do not lay down their arms; and Mr. Suñer's opinion was the same as that I have expressed before. We offer the insurgents liberty, individual rights, representation in the national Congress, and political and economical reforms, as soon as they lay down their arms; and they know, and should know, that the republic is honest and does not fail in its promises or in obedience to the law of its own existence, as it has not failed with respect to the noble island of Porto Rico, which already sends a most enlightened representation to this Congress. [Great applause.]

[Inclosure C.—Translation.]

[Extract.]

Sundry interpellations touching Spanish colonial policy, in the Constituent Cortes, July 26, 1873.

Mr. BETANCOURT. I have asked the floor in order to address two inquiries, one to the government and the other to the minister of the colonies. For many years various republics in either hemisphere have entreated Spain to denounce as pirates slave-trading vessels, their crews and their outfitters; and now that this step has been taken against the insurgent vessels at Cartagena, does not the government deem that the time has come when the decorum of the nation demands that a like declaration be made against all those engaged in the abominable traffic of human flesh, and who have enjoyed and are enjoying an impunity which is a dishonor to Spain and an injury to the human race? The question I put to the minister of the colonies is simply, Is his excellency disposed to lay before us the law for the immediate and absolute abolition of slavery in Cuba, which for five years past has been under consideration, and for five months past has been daily promised to us by the republican ministers, none of whom have yet presented it? If the government wishes to reserve to itself the glory of taking the initiative, I beg that it will do so as soon as possible, since, in the contrary case, there will not be wanting in this chamber a few men to join their names with mine in beseeching that Spain shall be freed from the stigma of slavery. [Many deputies: "All of us!"]

The COLONIAL MINISTER. Mr. Betancourt's inquiry has been answered in advance by the telegram I sent to the captain-general of Cuba on taking charge of my department, in which I said that it was my purpose to extend to that island the political, administrative, and social reforms advocated by the republican party while in opposition. And I shall do so because it is neither politic nor honorable to agitate public opinion under a party standard and to ignore it as soon as power is attained. And, in particular, the measure abolishing slavery is well advanced, and I cherish the hope that it will be presented to the Cortes before I cease to hold this office.

Mr. SORNI. I sought to lay before you the bill for the abolition of slavery in Cuba, and to this end I had already arranged with the slaveholders, who agreed to the measure, and without indemnification; nevertheless, as I had to write to Cuba and await a reply, time passed, and meanwhile I ceased to be minister. Had I remained in the ministry a few days longer I would have presented the abolition bill to the Cortes.

Mr. CALA.

And now I would like to know if the colonial minister is prepared to extend to the Antilles all the reforms proclaimed by the republican party while in opposition. Is he prepared to grant them without in any way considering the state of insurrection in which those islands now are or may be; or is he, on the contrary, in conformity with the statements of the minister of finance a few days ago to the effect that no reforms whatever would be conceded while any one should remain in rebellion? I was about to put the same question to the minister of finance, but in an inverse sense, namely, whether he agreed with the colonial minister, or if he still maintained the opinion he expressed the other day which is so opposed to federal republican principles.

The COLONIAL MINISTER. In answer to Mr. Cala I shall limit myself to referring him to my explicit statements previously made to Mr. Betancourt. If Mr. Cala thinks that my ideas and those expressed by the minister of finance are in conflict, I am bound to tell him that I think he is mistaken. When these reforms come up in the council of ministers their discussions will show whether or no the minister of finance and myself are agreed in respect to them.

The MINISTER OF STATE. I think Mr. Cala will be satisfied if I inform him in reply to his question of the other day that I am unable to furnish the documents referred to because, fortunately, they are not of record in the ministry of state.

The MINISTER OF FINANCE. I propose to reply to Mr. Cala's remarks in reference to me, made during my absence. I shall simply say to him that if he wishes to acquaint himself fully with the matter in question, I beg to refer him to the Diario de Sesiones, where he may thoroughly inform himself of the precise words I used to Mr. Betancourt concerning the Antilles, or to the opinions of his own companions in the chamber, and then he will see if there is any difference of opinion between the colonial minister and myself respecting the reforms which are to be carried out in the Antilles. There is no such difference, Mr. Cala, nor, indeed, has there been any with respect to the measures submitted to the late cabinet by Mr. Suñer y Capdevila. I have nothing more to say.

No. 416.

General Sickles to Mr. Fish.

No. 683.]

UNITED STATES LEGATION, SPAIN,
Madrid, August 8, 1873. (Received August 30.)

SIR : I have the honor to forward herewith for your information a copy and translation of a communication from Mr. Moreno Rodriguez, minister of grace and justice addressed to the Cortes, accompanied by a bill proposing the absolute and final separation of church and state in Spain.

The bill without essential modification will undoubtedly become a law.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

Bill presented by the minister of grace and justice, declaring the independence of the Church

[From the Diario de Sesiones, No. 56, August 2, 1873.]

To the Cortes :

Among the reforms exacted by right and demanded to-day by public opinion there is, perhaps, none more pressing than the recognition of the mutual independence of the church and the state.

The new principles by which society aspires to self-government, casting aside the artificial bonds with which the old *régime* hampered the free development of all social institutions, imperiously demand that each of these institutions should possess the sovereignty that belongs to them by virtue of their aims and objects, so that being duly organized, and dwelling under the shadow of the law, they may freely work together as harmonious members of the social organism for the fulfillment of the destiny of the human race.

The equality of all forms of worship before the state, while being the most efficacious sanction of the sacred inviolability of conscience, gives also the best guarantee for this noble alliance of all the rational aims of life. By means of such equality alone is it possible that neither the power nor even the favor of the state can be allowed to decide the lot of the different religious beliefs which, animated by the noble emulation of good against evil, aspire to represent the truth in its highest and most fundamental sphere.

The reason, the right, and even the honor of republican principles, join in demanding that the Catholic Church be neither subjugated nor especially favored by the state, but recognized by it in the plenitude of its right. That the Catholic Church should, according to this principle, renounce all privileged protection on the part of the state; and that the state should, in turn, renounce all interference with or control over the life of the Church, restoring to it its own internal prerogatives, in so far as common law assigns such prerogatives to lawful corporations, admits of no doubt, although the old order of things and the *régime* of the Concordats have given rise, with respect to the economical relations between church and state, to a situation complex in the extreme, and which can be alone resolved with justice by a noble equity on the part of each. The Church acquired in Spain, in the course of centuries, an immense property, about the legitimacy of whose origin doubts have not seldom been raised, and whose object was to meet, not only the necessities of religion, but also to provide for others now watched over by divers institutions, and especially by the state. This ownership of property having been subsequently modified, whether against the will of the Church or by its consent, it has given rise to the budget of public worship, the Church still preserving and enjoying, in addition, property due in part to the sacrifices of the state, and figuring lastly among the creditors of the latter as the possessor of an enormous capital invested in public bonds. The complexity of these facts requires that, in order to put an end to them, both the institutions concerned should proceed in concourse, animated by high principles of equity and justice.

Founding his action on these considerations, the undersigned, with the approval of the executive power of the republic, has the honor to propose to the Cortes the following bill:

ARTICLE I. The state recognizes the right of the Catholic Church to govern itself in complete independence, and also the free exercise of its form of worship, and, consequently, its rights of public meeting, discharge of its functions, holding property, and establishing systems of instruction, with all other rights guaranteed by the constitution and the laws to all lawful corporations.

ART. II. The Spanish Catholic Church, and other religious corporations, may acquire and hold property in the manner prescribed by law, but subject to the prohibitory exception established by law 15, title xx, book 10 of the Novísima Recopilación, which extends to all classes of bequests made in the last testamentary devises executed during the illness of which the grantor dies.

ART. III. The state renounces:

First. The exercise of the right of nomination to all vacant ecclesiastical charges, or those which may hereafter become vacant, whatever be their class and category, but without thereby relinquishing the rights of the lay patronage, (*patronato laical*.)

Second. Supreme jurisdiction and rights of all kinds relative to all the exempt jurisdictions specified and recognized in article 11 of the Concordat, sanctioned October 17, 1851.

Third. The *visa*, or *regium exequatur*, of all bulls, apostolic briefs, pontifical rescripts, dispensations and other documents emanating from the ecclesiastical authorities, leaving to the courts and common legislation the prosecution and punishment of whatever offenses may be committed by these means.

Fourth. The *gracias de cruzada* and *indulto quadragesimal*, and their proceeds.

Fifth. All intervention in the printing and publishing of liturgical books and others of equal or similar nature.

Sixth. All intervention in the dispensations which, until now, have been issued through the office called the *Agencia de Preces*.

Seventh. And lastly, all the powers, rights, control, prerogatives, and pontifical concessions, whether existing under the ancient royal patronage, (*patronato real*), or of other origin, by virtue of which it has the power of intervention in the internal affairs of the Church, reserving, however, its right acquired, for valid consideration, (*titulo oneroso*), to receive the proceeds of *expolios* (property belonging to deceased prelates) anterior to the Concordat of 1851.

ART. IV. The state recognizes:

First. The right of nuns in convents to receive the pensions they now enjoy under existing regulations. The register of these shall be transferred to the budget of the minister of finance, extinguishing the pensions of those who die.

Second. Contracts legally entered into with private parties for the repair of churches and other contracts executed conformably to existing regulations.

ART. V. All the members of the Catholic Church are in the character of citizens, subject to the duties common to all Spaniards.

ART. VI. All matters relating to the property and rights at present belonging to the Church, as well as those referring to the incomes which it has until now received from the state for various purposes, shall be made the subject of a special and definitive law, in the preparation of which the government of the republic will endeavor to proceed in accord with the authorities, corporations, and individuals especially interested.

ART. VII. All the buildings at present devoted to worship, or other religious uses, shall remain destined to the service of the Catholic Church, saving the rights which may be held thereon by private parties or corporations, until the law prescribed in the foregoing article shall be prepared. Those buildings which may properly be considered as artistic monuments by the scientific corporations to which they correspond shall be forthwith declared under the protection and immediate inspection of the state.

The Minister of Grace and Justice,
PEDRO JOSÉ MORENO RODRIGUES.

MADRID, August 1, 1873.

No. 417.

General Sickles to Mr. Fish.

No. 686.]

UNITED STATES LEGATION IN SPAIN,
Madrid, August 8, 1873. (Received August 30.)

SIR: I have the honor to forward a translation of a communication from a person identified with the insurgent movement in Valencia, addressed to the United States consul. Also, translation of a reply made on behalf of all the consuls by Mr. Cialdini, the Italian vice-consul.

The papers having been transmitted to me by Mr. Loewenstein, in charge of the United States consulate at Valencia, accompanied by a report of his proceedings, a copy of which is inclosed, I sent him certain instructions, which will be found in Appendix C.

I am, &c.,

D. E. SICKLES.

[Appendix A.]

Mr. Loewenstein to Mr. Adee.

CONSULATE OF THE UNITED STATES,
Valencia, July 25, 1873. (Received July 30.)

SIR: I have respectfully to inform you that on the 23d instant I received and accepted an invitation from the British consul to assist at a meeting of all the consuls here in order to treat of a subject of interest to them all.

The subject being to form a commission of five, that is to represent all the consular body, (composed of twenty-one individuals.)

This consular commission proposed and accepted is composed of the representatives of the United States, France, Germany, Italy, and England.

The consul of Italy, M. Guido Cialdini, brother of the general and minister of that name, has been elected unanimously the president, and the British consul the secretary of this commission. The inclosure No. 1 is a copy of the proceedings of our meeting.

There was another reason for naming said commission not contained in the inclosure No. 1. That is, considering the actual political circumstances of this country, and that the majority of the consuls are Spanish subjects, they would rather be a difficulty than a help in resolving important questions which may arise between foreign and Spanish subjects. This will be avoided by the commission thus composed of five of the most powerful nations, acting in the name of the whole body.

I have also the honor to forward to you a copy (No. 2) of a circular received by the president of the *junta revolucionaria* of Valencia, and our collective answer to it, (No. 3.)

I would also mention that a Spanish merchant here, Mr. Casimiro Luna, selling American and other sewing-machines, intended to fix, during the fair here, on the outside of his *tiluda* the American flag, but I told him that this being prohibited by the law he would, by insisting upon it, oblige me to apply to the government to take it down, as I think it improper that the American flag should cover a commercial charlatany, or perhaps a fraud.

I am, &c.,

RICHARD LOEWENSTEIN.

No. 2.

[Appendix B.—Translation.]

Circular of the cantonal authorities of Valencia to the consular body, and reply of the latter, (appendices 2 and 3 to Mr. Loewenstein's dispatch of July 25, 1873.)

The necessity of providing for the restoration of order, the difficult and painful nature of the situation, and the desire we feel to speedily create a normal and orderly state of things which will protect all citizens in the free exercise of their civil rights, are powerful causes which have deferred the time when this junta should have the satisfaction of addressing the worthy representative of the United States in this city. We are the sole and supreme power of the canton, since our origin springs from the will of the people represented in the militia and manifested in an election.

Nevertheless the powers conferred upon us are merely provisional until universal suffrage comes to annul them or to confirm them. We have founded the canton conformably to the principles of the government, but without the sanction of the assembly, for we have been moved thereto by purely local and patriotic motives.

The desire to avert a great wrong from this city drove us to rebel against a government to which we were closely bound by the double tie of an idea and a common interest.

Our mission, therefore, is mainly confined to preserving social order in all its integrity, for it is the basis of public welfare, and to securing from any detriment the rights of all citizens, both natives and foreigners.

Health and federal republic.

VALENCIA, July 23, 1873.

The President,
 PEDRO BARRIENTES.

To the CITIZEN CONSUL of the United States.

No. 3.

I have the honor to acknowledge the receipt of the polite communication you were pleased to send me, under date of yesterday, through your president.

I observe with satisfaction the good desires which animate the junta to sustain social

order, in order that the interests of none of the inhabitants of this canton shall suffer in the least degree.

I avail myself of this occasion to state to the junta that the consular body of this capital has appointed a committee of its own members, composed of the representatives of France, Germany, England, the United States of America, and Italy, of which I am chairman, and whose mission is to represent that body in all its official acts, and consequently the junta will be pleased to regard this reply as made in the name and stead of all the consuls accredited to this capital, to each of whom your circular is addressed.

VALENCIA, *July 24, 1873.*

The Vice-Consul of His Majesty the King of Italy,
G. CIALDINI.

The JUNTA OF THE VALENCIA CANTON.

[Appendix C.]

General Sickles to Mr. Loewenstein.

No. 9.]

LEGATION OF THE UNITED STATES,
Madrid, July 30, 1873.

SIR: Your communication of the 25th instant, with three inclosures, was received to-day. You will carefully avoid any engagement with your colleagues at Valencia which may affect your entire liberty of action in your official capacity. It is not in accordance with the practice of the United States Government that its agents should associate themselves with the representatives of other powers in measures touching its political or commercial relations with the country or places to which they are accredited. You are not authorized to recognize the official character of the persons pretending to set up a separate government at Valencia. The United States recognize the government of the Spanish Republic, and no other, in this country. You have a right to demand of whomsoever you may find in the actual exercise of power in your district all needful protection for your person and the persons of those acting under you, as well as for your families and your dwellings, and likewise for the persons and property of citizens of the United States in your consular district. You have also the right to communicate freely with this legation, and with any public or private vessel of the United States that may enter any port in your district. You will, however, be particular to avoid taking any steps which may be looked upon as a recognition of any authority hostile to this government.

I am, &c.,

D. E. SICKLES.

No. 418.

General Sickles to Mr. Fish.

No. 687.]

UNITED STATES LEGATION IN SPAIN,
Madrid, August 8, 1873. (Received August 30.)

SIR: I have the satisfaction to forward a copy and translation of a law passed by the Cortes granting a comprehensive bill of rights to the inhabitants of Porto Rico, being substantially the same found in Title I of the Spanish constitution. After a failure to pass the bill on Saturday last, the 2d instant, for the want of the prescribed quorum of deputies, the measure was again brought forward day before yesterday, and received one hundred and eighty-four affirmative votes against one in the negative. Another attempt was made to count out the house, but it happily failed, a sufficient number remaining, although there were but two to spare. On the failure of the bill to pass when first presented a cry of triumph went up from the conservative press, including the *Imparcial*, identified last year with the Zorrilla-Martos cabinet, and it was supposed the insurrectionary and turbulent spirit shown in the Spanish provinces might deter the Cortes from further concessions to the colonies. I commend to your attention the brief speech of Mr. Labra, a deputy from Porto Rico, and a leading reformer and abolitionist.

I am, &c.,

D. E. SICKLES.

[Inclosure A.—Translation.]

Report of the colonial committee declaring the first title of the constitution of 1869 in force in Porto Rico.

[From el Diario de las Sessions de las Cortes Constituyentes de la Republica Española. Sixth appendix to No. 42 of July 17, 1873.]

To the Cortes :

The permanent committee on the colonies has examined with all the deliberation and care possible under the circumstances the proposed law by virtue of which Title I of the Spanish constitution of 1869 is extended to the province of Porto Rico.

The committee accepts to its full extent the luminous preamble to the measure, a document which demonstrates that from to-day henceforth the colonial ministry will be animated solely by a high and broad sentiment of justice, the only one which can keep alive the sentiment of national unity beyond the Atlantic, and the only one sufficient to assure not merely the integrity of the country, but also the realization of the grand destiny reserved to Spain in the continent discovered by our great navigator of the fourteenth century.

The committee nevertheless deems it advisable to introduce some modifications into the bill submitted for its examination.

According to article 31 of the constitution of 1869, a law is requisite whenever the security of the state demands the suspension of the rights guaranteed in the 2d, 5th, 6th, and 17th articles thereof. The committee does not now discuss the goodness of this doctrine; it regards it as a fact of law, and looks only to harmonizing it with the actual state of affairs in the colonies, that is to say, with all those institutions which cannot be blotted out with the stroke of the pen, and the incongruities of which will be appreciated by the Cortes when they are finally called upon to reorganize the administration in our transatlantic provinces, if indeed such a matter be not left to the free initiative of the individual states of the Spanish federation.

For it is evident, on the one hand, that in view of the distance of Porto Rico from the mother-country, and the want of continuous and rapid communications between them, it would be scarcely less than impossible in certain cases that the 31st article referred to could be observed to the letter, for if it were, the law voted by the Cortes would sometimes arrive too late.

On the other hand, the superior governors and captains-general of the province of Porto Rico, although they do not enjoy, at least to their fullest extent, the extraordinary powers conferred under the royal order of 1825, are invested with all the authority and all the means sanctioned in the "Recopilacion des Indias" especially stated in Title III, book III, thereof, and it is difficult if not impossible to reconcile all this with the constitutional code of 1869.

It is needful, therefore, to harmonize all those regulations and face the difficulties which distance, even though slight, may bring about at times.

To this end the committee has given due attention to the propositions of law presented to the present Cortes by the worthy deputies from Porto Rico, as well as the evident spirit of the considerations with which the colonial minister prefaces the bill now under examination. But it is to be understood that the committee only endeavors to solve the difficulties of the moment without venturing any definitive opinion on the future organization of the provinces that are to constitute the individual transatlantic states of the Spanish federation.

For analogous reasons the committee opines that it is indispensable to give a certain development, and with it a certain precision, to a resort specified in the second paragraph of article 31, determining the law of public order, which is to be enforced in Porto Rico as in the Peninsula in certain determinate cases.

Basing its course on the foregoing considerations, the permanent committee on colonial affairs has the honor to propose for the approbation of the Constituent Cortes the following report :

ARTICLE I. The first title of the constitution of June 1, 1869, is declared in force in the province of Porto Rico.

ARTICLE II. When the safety of the state, in extraordinary circumstances, requires the suspension in the province of Porto Rico of the rights guaranteed in articles 2, 5, and 6, and the first, second, and third paragraphs of article 17, the superior governor shall communicate the fact to the central government by telegraph, so that the government may solicit from the Cortes the law referred to in the 31st article of the constitution.

ARTICLE III. In case of interruption of telegraphic communications, either permanently or for any length of time, by which compliance with the preceding article may be prevented, the superior civil governor of the province is hereby authorized to suspend the rights guaranteed in articles 2, 5, and 6, and paragraphs one, two, and three of the 17th article, unless the full provincial deputation convened for this purpose, together with the junta of the authorities, by a majority of votes, be unfavorable to the suspension in question.

In case of a tie the superior civil governor shall have the casting vote.

Under any circumstances the superior governor shall immediately communicate the resolution adopted, and the facts and circumstances on which it is based, to the ministry of the colonies, in order that the latter may transmit it to the Cortes, which, by means of a law if they deem it expedient, shall ratify the suspension of guarantees. In the negative case, or if thirty days elapse from the date of the suspension without the Cortes having taken any action thereon, the decree of the superior governor of Porto Rico shall be deemed to have been annulled.

ARTICLE IV. For all the effects of the 31st article of the constitution, the law of public order of April 23, 1870, shall be understood to be operative in the province of Porto Rico.

ARTICLE V. All laws and ordinances in any way opposed to the provisions of the present law are hereby annulled.

JOSÉ RAMON FERNANDEZ,
Chairman.
MANUEL GARCIA MARQUÉS.
MANUEL CORCHADO.
ENRIQUE CALVO DELGADO.
SANTIAGO SOLER.

PALACE OF THE CORTES, July 14, 1873.

[Inclosure C.—Translation.]

Extract from proceedings in the Cortes July 23, 1873. Approval of bill extending the first chapter of the Spanish constitution to Porto Rico.

[From La Gaceta de Madrid, July 29, 1873.]

* * * * *

The report of the permanent colonial committee on the bill extending to Porto Rico the first title of the constitution of 1869 was then taken up for debate, and there being no deputy to ask the floor upon the bill as a whole, it was then submitted to discussion by articles, and articles 1 and 2 were approved without debate.

Article 3 was read, when

Mr. Diaz Quintero said: I do not rise to impugn the article, but to make a protest and to say that, although I am not in conformity with the whole bill, I accept it as the least possible evil.

Without further discussion article 3 was approved, as were likewise articles 4 and 5, and it was announced that the bill would go before the committee on the correction of style, and that a day would be designated for putting it to a final vote.

* * * * *

[Inclosure D.—Translation.]

Final passage in the Constituent Cortes August 6, 1873, of the bill of rights for Porto Rico.

[Extract.]

* * * * *

The law declaring in force in Porto Rico the first title of the constitution of 1869, as revised by the committee on the correction of style and declared conformable to previous resolution, was then read, and upon Mr. Secretary Cagigal inquiring if it was definitively approved, several deputies demanded that the yeas and nays be taken.

Mr. LABRA. Let the names of those who have demanded the yeas and nays be placed on record.

Mr. MORAN, (Don Valentine.) Let them be recorded once, twice, and a thousand times.

The VICE-PRESIDENT. It is not customary to record the names of those who demand the yeas and nays, and the rules say nothing on the subject.

Mr. LA ROSA. I doubt if enough deputies have stood up to demand the yeas and nays.

The VICE-PRESIDENT. There is no doubt about it, Mr. Deputy.

The yeas and nays were taken.

This having been done, the said law was definitively approved by one hundred and eighty-four deputies against one, in the following form. (See the list, appendix.)

Mr. LABRA. I have asked the floor, first, to beg that the chamber will be pleased

to direct that the law which has just been passed be transmitted to Porto Rico by telegraph; and, secondly, in the name of the Porto Rican deputation, and, I think I may also say, in the name of all of the liberals of Porto Rico, to render here a public tribute of thanks to this assembly and to this government which has consecrated liberty in that island, bringing before us and voting to-day with noble enthusiasm that which henceforth may be called the bill of rights of Porto Rico.

The chamber recalls another moment of peril for the country, the time when, at the commencement of this century, the empire of Spain beyond the Atlantic fell through the shocks of a separatist movement. Then from the Antillian seas a voice resounded proclaiming that whatever might be the fate in store for Spain in the midst of that tempest, she would still have one island united to her and ready to follow her to the end in her days of glory as in the abyss of her misfortune. That voice was the voice of Porto Rico, [applause,] and her spirit is the spirit that to-day inspires me in addressing you these words. [Applause.] At the same time I have risen to express my fervent hopes that the resolution to-day taken by this chamber may re-echo to the furthestmost parts of Spanish territory, as well as in other lands, so that those who dwell in exile, driven away by the voice of discord and of disheartenment, may realize that there is no motive, no excuse, no pretext, for not recognizing the rule of Spain; that she cherishes the firm resolve, solemn and honorable, to consecrate liberty alike in both hemispheres. Let them know, then, that this chamber bears itself worthily, nobly, and loyally; let no one doubt the sincerity of Spain; let all be of one mind in this, and thus shall we found upon solid bases the integrity of our country by means of liberty and democracy. [Great applause.]

On the motion being put that the resolution of the chamber be transmitted by telegraph to Porto Rico, it was carried.

No. 419.

General Sickles to Mr. Fish.

No. 704.]

UNITED STATES LEGATION,
Madrid, August 23, 1873. (Received September 18.)

SIR: During the progress of the late insurrectionary movement in Andalusia I have received from some of our consular officers narratives of the events happening under their personal observation of sufficient interest to merit the attention of the Department. Mr. Charles H. Eder, the vice-consul at Seville, in temporary charge of the consulate in Mr. Jourdan's absence, sends me a succinct account of the progress of the cantonal rebellion in that city, and the sanguinary capture of the town by the government troops under General Pavia. I annex a copy of Mr. Eder's report for your perusal. That gentleman has been informed that his course under the trying circumstances in which he was placed, as described, meets with the approval of this legation.

I am, &c.,

D. E. SICKLES.

[Inclosure.]

Mr. Eder to General Sickles.

No. 36.]

UNITED STATES CONSULATE AT SEVILLE,
August 4, 1873. (Received August 7.)

SIR: In compliance with your orders to this consulate, in your No. 34, I have the honor to give you a brief account of the principal occurrences in this city during these last days.

On the morning of the 19th of July, at a meeting of the chief of volunteers with the members of the *ayuntamiento*, they determined to form a separate state, under the denomination of "*Canton Andaluz*." The *intransigentes*, who were in the majority, or were at least more determined, proceeded immediately to the public prison, releasing their principals, who had been prisoners, with suits against them, since the occur-

rences of the 30th of June. They escorted them in triumph through the principal streets of the city, causing a great panic among the population, resulting in a general emigration to the neighboring towns and to foreign parts.

Assembled in the town-hall, they deprived the proper authorities of their command and nominated a committee under the name of "*comite de la salud publica del Canton Andaluz*," composed of twenty-four individuals, among whom were republicans of the party of order. Few of these accepted the position, thus reducing the committee to fourteen individuals, and in a short time it was further reduced to six or eight of the original members.

One of their first acts was the suspension of traffic by rail, so that on the 21st all communications were stopped, and we were without mails or telegrams from that time to the 31st of July. Emigration continued by the river and by land in all kinds of transports, and on foot.

A regiment of volunteers visited the principal towns of the province, dissolving the *ayuntamientos*, and nominating committees of the same sort as that in this city. At Utrera, a town of importance about fifteen miles distant from here, they were repulsed with great loss to the volunteers, who left behind their guns and four cannons. Animated with a spirit of revenge, they arranged to return with a greater force to Utrera, but receiving news of the approach of two columns of troops, they suspended the expedition, and ordered the erection of barricades at the principal entrances of this city.

Foreseeing that a conflict might occur in the town, and with the idea of being prepared, if possible, to avoid the same, a meeting of the consular corps was held on the morning of the 24th of July, at the German consulate, at which meeting only two residing in the city did not attend.

After a long discussion, it was agreed to send a communication to the civil governor, or to his representative, as per copy No. 1, inclosed. A permanent committee of consuls was named, who were to meet at least twice a day in this consulate of the United States, composed of consuls or vice-consuls of Germany, England, Mexico, Italy, Guatemala, Belgium, and the United States, at which all consuls of other nations might be present, so as to determine on any unforeseen occurrence. The communication referred to was delivered by three consuls to the sitting committee of public safety, the only authority existing in the city that day. It was benevolently received by the said committee, and a few hours afterward each consul was supplied with a safe-conduct, and an announcement was also placarded facilitating to all foreigners free ingress and egress, on showing a pass from their consul, viséd by the committee of public safety.

Meanwhile barricades were in construction in the interior of the city, defended by cannon, of which more than fifty were placed, of various caliber, at the different barricades. The population remained quiet, and emigration, to a very large amount, continued.

In order to avoid the prejudices the commercial community was suffering, a communication was addressed by the consuls to the committee, as per inclosed copy No. 2, and on the following day the operation of loading and discharging on the river recommenced, but on a small scale, owing to all the carts being embargoed for the transportation of war material and other purposes.

It having come to the knowledge of the consular corps that in the public building called the "*Consulado*," or "*Louja*," in which are deposited the archives of the Indies, they were storing large quantities of powder and ammunition, a commission presented itself to the committee with the intent to avoid the great harm which might occur to the works of great merit, of so much interest to the whole world, and particularly to America; and although they did not concede all we desired, an order was given not to store any more powder, and to take preferably from that edifice what was necessary for the supply of the barricades.

The commission of consuls being informed on the 26th of July, at 11 p. m., that the government troops were at Lora, repairing the bridge of the railway company so as to continue their march on Seville, we proceeded to the telegraph station by authority of the sitting committee, transmitting certain telegrams to Cordova, and at break of day on the 27th, holding a telegraphic conference with that point in the hope of communicating with the commanding general, which was not effected.

On learning that the troops were in sight of Seville, about two miles distant, and disembarking by railway, a commission of the consular corps presented itself to the committee, soliciting a railway-carriage to go out and have a conference with the general, which was immediately agreed to; and at 4 o'clock p. m., said commission, composed of nine individuals, left Seville, and not meeting the general of the division, we had a conversation with Brigadier Salcedo, asking for due protection, in case of an attack, for the consuls and the houses of foreigners, which would be known by the display of the flags of their different nations.

The brigadier assured the commission that the consuls might rest tranquil, and that strict and positive orders would be given that they and their citizens would be respected, thus closing the interview.

The same morning of the 27th, General Pierrad arrived, placing himself at the head of the insurgents and giving orders to re-enforce and augment the barricades that were in the town.

On the following day, the 28th of July, at 2 p. m., fire was opened on both sides with cannon and musketry, without previous intimation from any quarter, which fire lasted six hours. The troops took some barricades and adjoining houses, where they remained during the night.

At 3 o'clock a. m. of the 29th the consular corps was cited to hear the sitting committee of public safety, who solicited the intervention of the corps so as to avoid the occurrences, but unfortunately it was too late, as we exacted from them, for our interference, that they should display a white flag at all the advanced posts, as also one over the *Giralda*, (the town of the cathedral,) which was done, but had no result or effect, the firing continuing on both sides from four in the morning, when it commenced again.

On this day, as also on the previous one, the attack by the troops was weak, they forming only a small number, although meanwhile they were taking up their line of attack. The defenders of the barricades then had recourse to a plan disdained and prohibited by the laws of war and humanity, and this fine town presented a horrible spectacle which dishonored her before the civilized world. With petroleum and other combustibles they set fire to the houses occupied by the troops, but, thanks to the peculiar construction of the houses in this city, the fire did not extend itself with rapidity.

The city at that time presented an imposing aspect; the inhabitants of the threatened district were flying *en masse*, carrying with them their most valuable effects and soliciting and seeking protection everywhere; the churches, including the cathedral, served as a refuge to many unfortunate families, the flames and smoke meantime rising to a great elevation.

A commission of the consular corps presented itself to the sitting committee, energetically protesting against these barbarous acts, but there was no authority over the incendiary volunteers to prevent these abuses.

At nightfall the combat ceased almost altogether, the troops remaining in the houses they had gained and the volunteers, re-enforced at the nearest barricades, continuing their incendiary work and pillage.

On the morning of the 30th the firing commenced again with more firmness by the troops and much less energy by the insurgents, many of these having abandoned their posts, disgusted at the incendiarism and pillage of their companions. At 12 o'clock the troops took the town-hall, and a few hours afterward the city was conquered.

The population, of all political opinions, received the troops with great demonstrations of joy.

The harm done by the war material is not very great, but not so that caused by the fire, which has destroyed about 30 houses. The aspect of the district is indescribable.

Several arrests have been made, among them some of the members of the committee, and two Frenchmen.

The civil governor, who took possession of his rank and post after the taking of the town-hall by the troops, ordered the same day the disarming of the volunteers, which was done without any resistance.

Among the houses burned there are some the property of French and Portuguese subjects.

For the rest, and in virtue of truth, I beg to observe that the committee of public safety, the volunteers, and the government troops have respected, as much as lay in their power, the interests of foreigners, having been affable and attentive to the indications suggested by the consular corps.

I have not sent you any printed published account of what has occurred, as I have not seen a correct one in the local newspapers.

I trust the conduct of the consular corps, and particularly mine, will meet with your approval.

I am, &c.,

CHAS. H. EDER,
United States Vice-Consul.

[Inclosure 1.—Translation.]

To the Civil Governor of this Province:

The undersigned, foreign consuls resident in Seville, having met to-day in the consulate of the German Empire, have the honor to address themselves to you to inform you that, in view of the grave circumstances through which this capital is now passing, they trust that their respective domiciles, and those of their fellow-citizens, will be respected in whatever conflict may occur.

Likewise, in the event of army forces undertaking hostile operations against this

place, they represent to you the duty incumbent upon them to put themselves in communication with the commanders of said forces, with the object of obtaining from them the respect due to their flags and their citizens. To attain this object they request you to be pleased to grant them the necessary safe-conducts, in order that they may quit and re-enter the city without any hinderance from the popular forces. And to this end the address of each is given, with the signature.

(Signatures.)

SEVILLE, *July 24, 1873.*

[Inclosure 2.—Translation.]

To the Chief of the Governmental Bureau of Seville:

The permanent commission of the consular body of this city having met in the consulate of the United States of America, it is resolved to address your corporation, requesting that, in order to avoid the serious prejudice suffered by the foreign vessels at anchor in this port by reason of the paralyzation of the operations of loading and unloading cargo, you will be pleased to contrive means to check this paralyzation, so that the necessary operations may go on and foreign vessels suffer no detention here.

At the same time it is also resolved to excite the zeal of your corporation to endeavor, by any means in your power, to devise ways of admitting the mails to this city, as their non-arrival causes serious prejudice to natives as well as to foreigners.

(Signatures.)

SEVILLE, *July 25, 1873.*

No. 420.

Mr. Fish to General Sickles.

[Extract.]

No. 366.]

DEPARTMENT OF STATE,
Washington, August 27, 1873.

SIR: Your dispatches Nos. 670 and 672, of the respective dates of the 27th and 31st July, are not calculated to command confidence in the expectation of a satisfactory settlement of the troubles in which Spain finds herself involved, either in respect to her internal or colonial affairs or her relations with other powers. As to the former, we can but sincerely regret that the effort to establish a republican form of government does not give greater promise of success. The United States promptly and cordially extended its recognition and the moral effects of its sympathy to the new government. It has further manifested its friendly interest by abstaining from insistence in the presentation of complaints on account of the frequent failure of compliance with assurance of intended reforms in the government of Cuba, and of the reparation of wrongs to the persons and property of American citizens.

Recent information from Havana shows that the decree for the release of embargoed estates had not at a very late date been proclaimed; and that influences seemed to be at work to induce the withholding of the publication and the consequent nullification of the decree.

* * * * *

The President has heard with deep concern and regret the announcement, said to be made by a member of the ministry of Spain, that no reforms will be granted, and no notice taken of the demands of the insurgents in Cuba, so long as they do not lay down their arms.

* * * * *

In the interest of Spain, no less than in that of Cuba, in the interest of the United States, in the interest of humanity, the President hopes that such may not be the determination of Spain, and you will not fail to urge upon the ministry the tendency of such policy, and the importance

in the direction of pacification, and to the arrest of the further destruction of property and waste of human life, of the disavowal or abandonment of a policy so inconsistent with a possibility of a restoration of peace.

* * * * *

It is therefore that it appears to us, as friends of Spain, of urgent importance that Spain, in the exercise of her historic wisdom, voluntarily recalled the inconsiderate declaration of a minister (if indeed it were made) that the granting of reforms to Cuba will not be entertained while the insurrection lasts, and the President desires that you impress in a friendly and delicate way the paramount importance of action rather than promise in the direction of reforms, of which the wisdom of the government at Madrid have more than once recognized the propriety.

* * * * *

I am, &c.,

HAMILTON FISH.

No. 421.

General Sickles to Mr. Fish.

No. 706.]

UNITED STATES LEGATION IN SPAIN,
Madrid, August 27, 1873. (Received September 18.)

SIR: I have the honor to forward herewith a translation of a note from the minister of state, dated 23d instant, replying to mine of June 15th last, respecting the imposition of fines upon foreign ship-masters for infractions of the peninsular customs regulations. It seems that this government is not disposed to reform the existing legislation on this subject, nor even to reciprocate our usage in the cases of fines imposed on foreign vessels. Under these circumstances it remains to be considered whether we should not modify our liberal course toward Spanish vessels, in the hope that Spain may be better able to appreciate the justice of our complaints when her own ships are exposed to the same inconveniences.

I am, &c.,

D. E. SICKLES.

[Inclosure.—Translation.]

Mr. Soler y Plá to General Sickles.

MINISTRY OF STATE,
Madrid, August 23, 1873. (Received August 26.)

SIR: In addition to what I informed you in my note of June 21st ultimo, I have the honor to acquaint you that the minister of finance, to whom I communicated the note from your legation, dated the 15th of the same month, has declared the impossibility of reforming the customs legislation and restricting the powers of the collectors to impose fines for contraventions of the existing laws, especially as their decisions may be appealed from, and do not affect the right of the prejudiced parties to make reclamation against them to the general direction, where their complaints are considered, and no other criterion is known than that of strict justice and equity.

I avail myself, &c.,

SANTIAGO SOLER Y PLÁ.

No. 422.

General Sickles to Mr. Fish.

No. 710.]

UNITED STATES LEGATION IN SPAIN,
Madrid, August 28, 1873. (Received September 18.)

SIR: I have the honor to forward herewith, for your perusal, a copy of the report of the bombardment of Almeria, furnished by Mr. Lluch, our consular agent at that place, to the consul at Malaga, and transmitted by the latter to this legation. Mr. Lluch's narrative will be found interesting and well told. This brilliant resistance of an unfortified and almost defenseless sea-port town, situated in one of the most disaffected districts in Andalusia, whose chief cities had successively joined the cantonal insurrection without a shot, and the discomfiture of the buccaneer leader, Contreras, in command of two of the most powerful vessels of the Spanish navy, deserves more than a passing mention in the history of the recent occurrences in this perturbed country, and justifies the enthusiastic vote of thanks passed to the defenders of Almeria by the Cortes, in their sitting of July 30.

I am, &c.,

D. E. SICKLES.

[Inclosure.—Translation.]

[Account of the attack of the insurgent frigates *Almanza* and *Vitoria* on the town of *Almeria*,
Andalusia.]*Mr. A. Lluch to Mr. A. M. Hancock.*UNITED STATES CONSULAR AGENCY,
Almeria, July 31, 1873.

SIR: On the 29th instant, early in the morning, the frigates *Almanza* and *Vitoria* made their appearance, under the command of the so-styled general in chief Contreras. The remaining population of this town fled precipitately, leaving only about a thousand of the civil guard and carbineers, and some hundred or so of the well-affected volunteers, and a few *intransigentes*, who, however, were unarmed. The brigadier in general command of these forces disposed his troops at all the points in the neighborhood where a landing could be effected. The civil governor, a consular delegation, and a commission of *intransigentes*, respectively, visited the frigate to inform the commanding officer that the *intransigente* strength in this city was small, that the military authority possessed ample forces, and was resolved to prevent a landing, and that a majority of the population had declared their unwillingness to proclaim an independent canton; and therefore, in view of the comparative unimportance of the town, and in order to avoid a conflict and bloodshed, they begged him to exhibit sufficient abnegation to desist from an attack, and continue his course to other points whither it was known he had been summoned with all urgency. In view of these representations, the going and coming in the communication of which had consumed nearly the whole of the day, General Contreras answered that he would accede in part to the request made him, but that, on the same evening, the sum of one hundred thousand dollars must be paid to him as a war contribution, together with all the books and funds in the town treasury; and that, if this were not done, he would destroy the city at daybreak on the following day, the 30th.

He was roundly answered that his demands would not be acceded to, and that, if he wished, he might add to his *hoja* (register of military services) the glory of having destroyed an open town without any means of defense; but that he would not be allowed to disembark.

A most painful night passed; day dawned on the 30th, and time wore on till half-past eight o'clock, when one of the aids of General Contreras came ashore for the purpose of handing each consul a note informing him that, within one hour, he would open fire and attack the city; but it appears that that officer, on reaching the house of the English vice-consul, Mr. Barron, became alarmed at the hostile demeanor of several of the volunteers, and turned over the notes for the remaining consuls to Mr. Barron, who did not then deliver them, and in fact has only just done so to-day at 12

o'clock, since at the time he received them it is believed his only thought was to take refuge with his family on board an English merchant-vessel then in port. Anyhow, their delivery was evidently incumbent on General Contreras's aid in person.

At 10 o'clock four launches, mounting guns, approached the shore and attempted a disembarkation under cover of discharges of grenades from the Almansa, but on coming within Remington-rifle range the launches were received with a shower of balls which forced their precipitate retreat, with a loss, it is said, of 8 killed and 16 wounded.

This first episode being terminated, and the insurgents now comprehending that it did not agree with them to continue that mode of attack, they began to fire conical shells of 100 pounds weight, similar to those used in attacking iron-clad vessels. They fired about a dozen, and then, seeing the tranquillity and passive silence of those on shore, they ceased firing and hoisted a white flag, doubtless in the hope that those on shore would avail themselves of the offered truce, and that an arrangement of some sort might be effected; but the shore forces, having assembled and deliberated, replied by hoisting a black flag on the most elevated site in town. On seeing this, the cannon again opened fire, throwing projectiles of the same sort as before, but of 200 pounds weight, and to the number of about 20. I was interrupted in my contemplation of this spectacle by your telegram, begging me to inform you how matters were going on here. I answered you, and then returned to my post of observation on the terrace, alongside of the flag-staff. I then sent a message to the houses of the other consuls to inquire if they had received any telegrams announcing the coming of any foreign war-vessel, but there was not a single consul, besides myself, in the whole city; all had been terrified by the breath of these fire-spouting iron-mouthed monsters. The cannonade continued until 4½ o'clock, with a few intervals of rest. At that hour I went down to dinner, and I fancy the same idea must have occurred to those on board the frigates, for they fired no more. At 6½ or 7 o'clock they hoisted anchor and set sail westward. I then received your last telegram, informing me that the English gun-boat *Lynx* had started for this point, and I answered you that the frigates had already left, bound westward. Subsequently I learned that they went to Motril and seized \$12,000 there, and that from thence they sailed for Malaga. I hope they will not treat you as they have treated us.

In this encounter we have had the good fortune to have not even a single man wounded. There were not the slightest symptoms of robbery or violence, and the damage caused to the houses is insignificant, not amounting to the value of the projectiles fired at us. The public forces and authorities were all determined and at their posts, and even when exposed to the enemy's fire, they exhibited the utmost serenity and energy.

A. M. HANCOCK,
United States Consul, Malaga.

A. LLUCH,
United States Consular Agent.

No. 423.

Mr. Fish to General Sickles.

[Telegram.]

WASHINGTON, *September 9, 1873.*

Hall telegraphs from Havana that Official Gazette publishes decree of captain-general ordering immediate sale, at public auction, of all the real and personal property which has been announced to be sold by the treasury in consequence of the insurrection. He states that some American citizens are covered by the decree, and that the decree of the government of Spain restoring embargoed estates had not been published officially in Havana on 5th instant. You will remonstrate against the non-publication of the latter decree, of which you had advised the Department, and which was officially published in Madrid, and you will protest against the enforcement of the captain-general's decree, as affecting the property or rights of any American citizens.

No. 424.

General Sickles to Mr. Fish.

[Telegram received September 19, 11.15 a. m.]

MADRID, *September 19, 1873.*

Minister says, having sent positive orders to captain-general to raise all embargoes on property of American citizens and return same to owners, he replies that all our reclamations for restoration of embargoed property have been decided favorably to applicants, and no claim of this kind is now pending. The Spanish government has, nevertheless, sent further orders suspending sale of any embargoed property belonging to our citizens, no matter if not claimed.

SICKLES.

No. 425.

Mr. Sickles to Mr. Fish.

No. 757.]

UNITED STATES LEGATION IN SPAIN,
Madrid, October 17, 1873. (Received November 7.)

SIR: I have the honor to forward herewith a copy of a note sent to the minister of state, on the 16th instant, asking such reforms in the customs regulations and administration in Cuba as will prevent the abuses practiced on foreign vessels in the ports of that island.

On the same day Mr. Layard and Mr. Lindstrand made similar representations on the part of their governments respectively.

I am promised a conference with the ministers of state and of the colonies about pending matters before the departure of the latter for Cuba and Porto Rico, in which I propose to invite the particular attention of his excellency to the grievances of which our ship-masters complain.

You will observe that the note as sent differs in several passages from the draught heretofore forwarded, and that the argument is fortified by additional citations from the revenue laws and customs regulations of Spain.

I am, &c.,

D. E. SICKLES.

[Inclosure.]

*General Sickles to Mr. José de Carvajal.*UNITED STATES LEGATION IN SPAIN,
Madrid, October 16, 1873.

SIR: I have the honor to acknowledge the receipt of a note from your excellency, dated the 16th of May last, in reply to mine of the 27th of January preceding, respecting the onerous burdens imposed on the trade between the United States and Cuba by the customs authorities in that island.

I regret to have occasion to ask the attention of the government of the republic to some further representations I am instructed to make on this subject.

It appears, from sundry memorials recently presented to my Government by American ship-owners and masters of vessels, and also from the official reports of the consul-general of the United States in Cuba, that notwithstanding the assurances given me in the several communications received from the ministry of state under date of Feb-

ruary 4, 1871, and of January 2, 1873, the reforms and ameliorations therein announced have been but imperfectly carried into effect in Cuba.

The memorialists, therefore, solicit the aid of their Government in further efforts to obtain relief from grievances of which, I am persuaded, your excellency will admit that they justly complain.

It is, perhaps, unnecessary to assure your excellency that my Government disclaims any purpose of discussing the perfect right of every nation to establish and enforce such rules as it may choose to frame for the execution of its own revenue laws. It is to be presumed, however, that it cannot be the intention of this class of local ordinances to inflict needless vexation and loss on foreign vessels engaged in legitimate commerce between friendly countries.

That your excellency may see how difficult it has been for foreign ship-masters to inform themselves as to the requirements of the customs regulations in Cuba, I may be permitted to recapitulate the successive orders, decrees, and circulars which have been published from time to time within a few years past.

On the 1st of July, 1859, a royal order was issued in Madrid, prescribing numerous regulations for the government of foreign commerce with Cuba.

The order was suspended soon after its publication, and remained in abeyance until July, 1867. It was then promulgated anew, with important modifications respecting the manifest.

With the publication of the decree of 1867, appeared also in the Spanish, French, and English languages what purported to be identical "rules to be observed by the captains and supercargoes of vessels, in conformity with the royal order of July 1, 1859, the royal decree of March 1, 1867, and the rules in force according to the existing custom-house regulations."

On the 18th of November, 1868, the last-named ordinances were suspended, and a fresh compilation of rules issued, in which it is to be especially noted that the requirements as to the manifest were again changed and made more exacting; and also that the Spanish original and the English and French versions, as published, differed essentially in the terms of the first rule prescribing the contents of the manifest.

On the 16th of May, 1870, the rules of 1868 were again promulgated with further modifications and interpretations announced in a circular from the intendente-general de hacienda of Cuba.

On the 9th of June, 1870, the minister of ultramar ordered the remission of all fines imposed in Cuba for the non-presentation of a third copy of the manifest; forbidding the provincial authorities from changing the customs legislation; declaring them personally liable for damages caused by such transgression; and restoring to force and effect the royal order of July 1, 1859, as modified by subsequent orders. This decree was published in Cuba, July 6, 1870.

On the 3d of November, 1870, the intendente general de hacienda, in an official communication, informed the consul-general of the United States at Havana that so much of the last-mentioned decree of June 9 as remitted fines for the non-production of a third copy of the manifest had been annulled on the 21st of September.

On the 29th of December, 1872, another decree was published, containing a new code of regulations, modifying in various particulars those previously in force.

On the 2d of January, 1873, the minister of state informed the undersigned, in reply to sundry reclamations made by the United States Government: 1st, that hereafter no fine imposed by the customs authorities in Cuba upon captains or supercargoes of national or foreign vessels for errors, omissions, or inaccuracies in ships' manifests or *sobordos* should take effect without the previous approval of the intendente general de hacienda, the administrators and treasurers of the several custom-houses being required to exact, on their own responsibility, a sufficient guarantee to protect the interests of the treasury in case vessels put to sea before the payment of fines; 2d, that with all convenient speed the intendente should propose such separation as could be made between the facts and details now required to be stated in the *sobordos*, retaining such as served to prevent fraud and discontinuing those not important to the interests of the revenue; and 3d, that fines imposed on captains or supercargoes of vessels for errors in their papers and subsequently revoked, as well as those spontaneously condoned by the supreme government, should be refunded within the fixed term of one year, counting from the date of the reception by the intendente of the order directing such restitution or declaring the penalty to have been improvidently imposed.

My Government is not informed that these dispositions have been published in Cuba, nor is it advised that they have yet been put in practice.

In my notes of July 16, 1870, November 27, 1872, and January 27, 1873, the attention of your excellency was invited to various clauses of the royal order of July 1, 1859, the decree of March 1, 1867, the regulations of November 11, 1868, and those of December 26, 1872, which seemed to my Government unreasonably severe and punitive in their treatment of lawful commerce. It is unnecessary to recapitulate the views presented in those communications. I desire now, more especially, to bring to your excellency's notice the representations made by the merchants of New York and Bos-

ton in a recent communication they have addressed to the Department of State at Washington.

They show, for example, that in making out their manifests they are entirely dependent on the shippers of cargo for information as to the weights, values, and contents of packages shipped; and that irresponsible parties sometimes give false or inaccurate descriptions of their consignments, resulting in fines imposed on vessels, largely in excess of the freight received. It is, therefore, suggested that whenever the manifest and bill of lading agree, and the contents, weight, or value of any package be found on examination to differ from the same in the manifest, the penalty thereby incurred shall be imposed on goods and not upon the vessel. In such cases, if it should be established on the part of the consignees that the master of the vessel is in fault, they would have ample legal remedies against the ship-owner. On this point the consul-general of the United States at Havana reports, under date of January 13, 1873, that he had suggested to the intendente, that it would be more just to hold the goods rather than the vessel responsible for any concealment or deceit respecting the contents of packages, and that the intendente replied that such a rule would be more equitable, but the regulations put the fine on the vessel.

It also appears that the customs authorities at the several ports in Cuba place different constructions on the laws and regulations prescribing the form and contents of a ship's manifest. Fines have been imposed in one port for stating that for which fines were imposed in another port for omitting. Inasmuch as it is required in all cases that the manifest shall be certified in duplicate by the Spanish consul at or nearest to the port of loading, it is proposed as a just and convenient remedy for such irregularities that manifests bearing the certificate of a Spanish consul shall be accepted in any of the ports of Cuba as regular and sufficient in form.

I have observed that in nearly all of the cases I have had occasion to bring to the notice of the predecessors of your excellency, the manifest in duplicate had been exhibited to the Spanish consul at the port of departure, one copy of the document having been left with him to be transmitted to the port of destination and the other, approved under the hand and seal of the consul, returned to the master of the vessel to be afterward presented by him to the customs authorities. Surely it should be held sufficient to exonerate ship-masters from penalty if their papers are found to be in due form by the commercial agents of the country to which they are bound. If a ship-master arriving in Cuba does not produce the consul's certificate, he is fined \$500. If he does produce such a certificate and the manifest is nevertheless informal, he is fined for every oversight or neglect of the consul to point out informalities subsequently discovered by the more expert customs officers in Cuba. The blame, if any, in such cases is with the consul. And yet others who are blameless pay the penalty. And not only are the ship-masters fined when consuls overlook mistakes in a manifest, which it is their duty to correct, but it has not infrequently happened that American vessels are not made to pay a penalty because the certificate of the Spanish consul was informal. The brig *Dexter Washburne*, of Portland, was fined \$100 at Matanzas because the consul at Charleston had neglected to impress his official seal on a manifest after verifying it. Spanish consuls may be presumed to know the customs regulations in Spanish ports. At least their official certificate and seal authenticating a manifest should be accepted as evidence of an honest intent on the part of ship-masters to respect and obey Spanish laws. And if the consul is excused for ignorance of the customs regulations of his own country, the foreign ship-master should not be punished for the fault of the official to whom he is compelled, under heavy penalties, to apply to certify the regularity of his papers.

It is likewise stated that ship-masters are only informed at the last moment before the departure of their vessel of fines imposed on them. This notice is usually received when application is made at the custom-house to clear their ships for another port, so that the vessel must be indefinitely detained if payment be contested, or else the fine must be paid, no matter how unjust it may be, in order to avoid the greater loss of detention. It would seem that a practice so unreasonable and inconvenient might be prevented by a regulation requiring the customs authorities to make known to the captains or supercargoes of vessels, within forty-eight hours after the ship's papers shall be delivered to the proper officer, all fines inflicted for irregularities in the manifest.

Complaint is also made by fifty-five American ship-masters who had delivered cargoes in the port of Matanzas, and thirty-three captains of American ships which had made voyages to the port of Santiago de Cuba, that with the utmost desire on their part to conform to the requirements of the customs authorities, they had, nevertheless, found it impossible to fill up a manifest which had not afforded some pretext for fines ranging from twenty-five to five hundred dollars. So various and so frivolous are the grounds on which fines are imposed that it would be in vain, they say, to attempt to enumerate all of them. Informalities of the most trivial nature are deemed sufficient to warrant the severest penalties. These ship-masters state: "It is never alleged that we intend to defraud the Spanish revenue. We are fined for an absence of the names

of the shipper of the goods and the consignee; for a failure to express numbers, weights, and measures in letters and figures; for a failure to state, after the enumeration of our cargo, that we carry nothing else; for a failure to make a similar statement when we come in ballast; for an absence of what is known as the asseveration, or the words 'So help me God;' for the slightest error in converting American weights and measures into Spanish denominations; for omitting, in the heading of the manifest, the nationality, class, tonnage of the vessel, name of captain, place whence she comes and port whither bound; for consigning goods to order, although they may be so consigned in the bill of lading."

Illustrations of the character of these penalties may be seen in the reports of the American consuls in Cuba. It appears that, although the regulations may have been followed in stating the generic class of freight, yet vessels are fined because a manifest does not also contain a specific description of the cargo. For example, fines have been imposed because hoops were not described as "wooden" hoops, and because nails were not stated to be "iron" nails. In other cases, extreme technicality is required in the terms used in stating the nationality of a vessel. It is held to be insufficient when the manifest shows the name of a ship and the port or place where she is registered, since, for example, fines have been inflicted when the manifest has described a vessel as "the brig Hudson, of New York," because it was not stated that she was the "*American* brig Hudson, of New York." Penalties have likewise been exacted for omitting to state the marks and numbers of packages which were neither numbered nor marked.

Two remarkable cases are found in a late dispatch from the United States consul-general in Havana. He reports that the American mail-steamer *Crescent City*, having arrived in that port on the 13th of October last, with a manifest containing fifty-eight items of cargo, was fined fifty-nine times; in other words, a fine of twenty-five dollars for each item in the manifest and five hundred dollars besides, for the want of the usual consular authentication of that document, although the consul's certificate had never before been required of mail-steamers; that is to say, the manifest having been filled up under a misapprehension of the regulations in force at the moment, and the same error having occurred in noting each item of freight, amounting at most to but one offense, if it could be called an offense, yet the penalty was repeated fifty-eight times, according to the letter of a rule not known to the master until after his arrival in port; and there is a case now pending at Sagua la Grande, that of the American brig *G. de Zaldo*, which has been fined one hundred and forty-nine times for mistakes in her manifest. One hundred of these fines are for a single item, noted in the manifest as 100 kegs of lard. The customs authorities say these should have been called "tierces," and for that misnomer they impose a hundred fines of twenty-five dollars each! It is scarcely too much to affirm that customs regulations executed in such a spirit tend toward the exclusion of foreign vessels from commerce with Cuba.

As a general rule, a ship's manifest agrees in its description of the cargo with the bills of lading delivered; and these are made out from the data furnished by consignors in settling the terms and conditions of the contract for freight. This custom was recognized in the royal order of July 1, 1858, and in the royal decree of March 1, 1867. It is the general practice of commercial nations to regard the manifest as a means only of identifying the several shipments constituting the cargo. It is the peculiar office of the invoice, as distinguished from the manifest or bill of lading, to set forth the information on which duties are ascertained. The owner or agent entering goods in a foreign port for consumption or sale alone possesses full and accurate knowledge respecting his importation. The mere carrier, whether a ship-owner, or a railway corporation, or an express company, cannot furnish information respecting the contents of closed packages. Duties are never charged and collected upon the statements contained in a manifest. Port-charges do not depend on the nature of the cargo. It is not, therefore, easy to discover what useful purpose is served by exacting in a manifest more than is necessary for the identification of the articles comprising the cargo and less than is required for the computation of imposts.

The payment of duties is seldom, if ever, evaded by means of combinations between owners of vessels and owners of cargo. The risk incurred by the ship would be far greater than any gain derived from the transaction. And since ship-owners are not the accessories of consignees in defrauding the revenue, neither should they be made to suffer penalties for the conduct of others for whose acts they are not justly responsible. Nor can ship-masters, by collusion with parties at the port of destination, defraud the revenue without extreme peril to themselves and the vessels they command. It is a mistake to assume, as seems to be often done in Cuba, that the revenue frauds said to be so common there are to be attributed to masters of foreign vessels. These practices on the part of unprincipled dealers in commercial towns generally depend for their success on facilities acquired by long residence, by confidential relations with subordinate customs officers, by false representations in invoices, and by various devices known to themselves in making up packages. The ship's manifest neither aids a dishonest importer in consummating a fraud, nor assists a vigilant revenue official in detecting imposture. On the contrary, it most frequently happens that an upright

ship-master is subjected to penalties which he would have escaped if he had conspired with those whose connivance is essential to the success of revenue frauds.

I might point out several instances in which the requirements of one regulation cannot be obeyed without violating the provisions of another. One illustration of these contradictions will be sufficient to show the necessity of a further revision of these ordinances. Article IV requires the captain, at the end of the voyage, to note in the duplicate *sobordo* he retains, 1, any goods in the hands of the crew; 2, the surplus ship's stores; 3, arms and ammunition; 4, the coal on board, if the vessel be a steamer. And yet Article VIII denounces any amendment or alteration whatever in the *sobordo* or manifest as a forgery, for which the captain will be arraigned before the criminal tribunals.

It is extremely desirable that the uncertainty resulting from so many successive orders and decrees, and the various interpretations given to particular clauses at the several ports in Cuba, should be removed by an authoritative declaration of the supreme government.

1st. Is a third manifest necessary besides the two required to be certified by the Spanish consul?

I have already shown that on the 9th of June, 1870, a decree was issued by the minister of ultramar, remitting all fines imposed in the island of Cuba for the non-presentation of a third manifest. This decree was published in the official gazette at Havana and communicated to the Department of State at Washington. Yet afterwards numerous fines were extracted from foreign vessels because they were not provided with a third manifest. Subsequently, on the 4th of February, 1871, the minister of state, Mr. Martos, in reply to a note from me on this subject said:

"Respecting fines inflicted on captains of vessels for informalities in their manifests, or for not having presented them, in addition to the cargo-list certified by the Spanish consul at the port from whence they sail, considering that in these omissions there was no intention to defraud, the said fines have been remitted in those cases in which the vessels had entered the ports of the island of Cuba since the 19th December, 1868, that being the date when the order of the provisional government, of the 11th of November then last past, commenced to be in force."

Nevertheless, it appears that the customs authorities in Cuba continued to impose fines as well for not presenting as for informalities in the third manifest.

And now, according to the tenor of Article VII of the new regulations of December 1872, the captain must provide himself with a manifest besides the duplicate *sobordo* certified by the consul.

2d. Is it necessary that foreign vessels should state their tonnage according to Spanish measurement?

Upon this point likewise, contrary decisions have been made since I had the honor to receive the note of the minister of state, Mr. Martos, dated February 4, 1871, in which his excellency said:

"Captains of foreign vessels are no longer required to declare the tonnage of their vessels in Spanish measure, it being sufficient on the first voyage for them to make such declaration in conformity with the builder's measurement, or according to the measurement of the respective nations to which they belong; being, however, obliged thereafter to show certificates of the measurement that shall have been used for the collection of tonnage-dues, as laid down in the order of 9th of July last."

Nevertheless, the new regulations of December 1872, Article XII, impose a charge on the captain who fails to declare the exact capacity of his vessel according to the Spanish standard.

On this point I may remark that the general customs ordinances of Spain (Article XLVI) do not require that the manifest of a foreign ship shall contain a statement of her tonnage in Spanish measurement.

3d. Is it enough that the manifest state generally the class of merchandise comprising the cargo, with the marks, numbers, and weight of packages, or must the contents of each and every package be particularly described?

4th. It is respectfully suggested that whenever the manifest and bill of lading agree, and the contents of packages are found on examination to differ materially from the description of the same in the manifest, the penalty thereby incurred shall be imposed on the goods and not upon the vessel.

5th. To the end that foreign ship-masters entering Cuban ports may be relieved from the hardship and vexation of so many penalties imposed for trivial informalities in the manifest, it is respectfully submitted that the certificate of the Spanish consul at the port of departure should be accepted as a sufficient authentication of the regularity of that document.

6th. A further regulation is respectfully proposed requiring the customs authorities to make known to the captains or supercargoes of vessels all fines for irregularities in ships' papers within forty-eight hours after said documents shall have been delivered to the proper officer.

7th. Lastly, I beg leave to observe to your excellency that long delays continue to

occur in the return of money collected for fines subsequently remitted. Fines imposed on American vessels in 1868, and which General Lersundi ordered to be returned more than four years ago, are still withheld by the intendency. Considering the facility with which penalties are inflicted and the difficulty incident to their remission, it would seem there should be no hesitation in the matter of restitution after a decision to that effect has been announced.

Respecting several of the foregoing suggestions, I may, in conclusion, cite in support of the views now presented, the decree of the government of the republic dated May 30, 1873, and Article XLVI of the general customs ordinances of Spain. For example, Article I of the decree requires the captain of a vessel coming from a foreign port to present one general manifest of the cargo, visaed by the Spanish consul at the port of departure, or by the local authorities if there be no Spanish consul. So much of the decree of May 30, 1873, as requires one manifest only, is identical with Article XLVI of the general customs ordinances. Articles V and VI provide that when the manifest and bill of lading agree in the description of the freight and in the statement of the gross weight, the consignees shall pay any fine imposed for errors in such description or weight that may appear in the further examination of the cargo by the customs officers. And if the captain has deviated from the bill of lading in making out his manifest, then he must pay the fine incurred by reason of any discrepancy between the cargo and the manifest. Article X forbids Spanish consuls certifying a manifest that is not drawn up in conformity with the regulations in force; and consular officers are required besides to note on manifests presented to them any mistakes or amendments made therein, and to advise the general customs office in Madrid, by post on the very same day, of all manifests they certify and the particulars thereof.

Appended to this note I have taken the liberty to transmit for your excellency's perusal several papers on this subject which I have received from my Government.

A is a copy of a dispatch from the consulate general of the United States at Havana, dated October 30, 1872, giving many examples of unjust fines imposed.

B is an extract from a subsequent communication from the consul-general, dated January 13, 1873.

C is a copy of a memorial addressed to the Secretary of State of the United States, dated New York, January 13, 1873, and signed by many respectable ship-owners trading between that city and the several ports in the island of Cuba; the same memorial is also signed, under date of January 23, 1873, by other firms of equal respectability residing in Boston.

I avail myself of this opportunity to repeat to your excellency the assurances of my most distinguished consideration.

D. E. SICKLES.

His Excellency the MINISTER OF STATE.

[Inclosure A.]

Mr. Torbert to Mr. Fish.

UNITED STATES CONSULATE GENERAL,
Havana, October 30, 1872.

SIR: I transmit herewith three copies of what are styled the "Regulations for the guidance of captains and supercargoes of Spanish as well as foreign vessels," &c. These regulations are a recapitulation of the royal order of 1st July, 1839, put into force on the 1st July, 1867, which has so frequently been referred to in communications from this office. It seems unnecessary to call the Department's attention to the ambiguities, contradictions, and absurdities contained in this document. The so-called translation into English is quite as intelligible as the original in Spanish. Under these regulations fines are imposed for the following offenses:

For omitting to express class of vessel, whether ship, bark, brig, &c., \$25.

For omitting the nationality of the vessel: it is not sufficient to state the brig ———, of Boston; the master must state the American brig ———, of Boston; the penalty of such omission is \$25.

For omitting name of the vessel, \$25.

For omitting to state the exact Spanish tonnage measurement, \$25.

For omitting master's name, \$25.

For omitting the port or ports from whence arriving, \$25.

For omitting the name of the shipper or shippers, each omission, \$25.

For omitting names of consignee or consignees, each omission, \$25.

For omitting to state the kind of package, \$25.

For omitting to state in writing, as well as in figures, the quantity or number of packages or pieces, \$25.

For omitting marks and numbers, although the packages may have neither, \$25.

For omitting to state the generic class of the effects manifested, such as wooden hoops; iron nails, &c., \$25.

For omitting to state the gross weight of different items, \$25; and other penalties for discrepancies in weights. If goods are to go into bond, or are in transit, and not so stated, \$25.

For omitting to state at the foot of the manifest that the vessel brings no other cargo, although she may be in ballast, \$25.

For omitting to give the weights and measurements in the decimal or French system, \$25 each omission.

For omitting to manifest any goods that the crew may have in their possession, \$25.

Omitting to note the surplus stores, \$25.

Omitting to state the arms and ammunition on board, \$25.

Omitting to state the quantity of coals on board, if the vessel is a steamer, \$25.

Omitting to deliver the manifest the moment of the visit, \$200.

For manifesting goods to order, whether or not so required by bill of lading, \$25.

If the manifests have not been authenticated by the Spanish consul, a fine of \$100 is imposed. In a case where the Spanish consul had neglected to impress his seal on the manifest, it was held by the customs officials at Matanzas that there was no authentication, and the vessel was fined accordingly.

For omitting in the manifest any of the requisites of rule 1, \$25.

In addition to the consular manifest called "*sobordo*," another simple manifest, not authenticated, is required; this requisite is not clearly provided for in the royal order and only inferred from the second paragraph of rule 7; nevertheless a failure to produce it subjects the master to a penalty of \$500. Numbers of our vessels have been subjected to these exorbitant fines. Any erasure, alteration, or interlineation, subjects the master to a charge of forgery.

I know of no instances where this penalty has been enforced. A fine of \$25 is usually imposed for each defect.

The presentation of the consular manifest is obligatory in all the ports of the island at which the vessel may touch, for orders or in distress.

Rule 12 provides that the master who does not declare the exact Spanish tonnage, shall pay the expense of admeasurement, should there result an excess of 10 per cent. This rule is inconsistent with the first paragraph of rule 1.

All goods omitted in the manifests are confiscated, and a penalty of double duties imposed on the master, and if the duties should exceed \$400, the vessel, freight, money, &c., will be confiscated.

For every package missing, upon the discharge of a vessel, a fine of \$200 is imposed.

For discharging goods without permits a fine of \$1,000 is imposed.

Articles 16, 23, and 26 provide for penalties which are not clearly defined.

Vessels coming from a port where there is no Spanish consular officer are required to have their manifests verified by three merchants, who will also certify that no such officer resides at the place, or within a radius of thirty kilometers; if omitted, a penalty of \$100 is imposed. There is no provision for this penalty in the regulations, but the fine is frequently imposed notwithstanding.

The mail-steamer *Crescent City*, of and from New York, arrived here on the 15th instant, the day upon which the circular of the intendente, referred to in my No. 123, went into effect. Her manifest comprises fifty-eight items, and a fine of \$25 has been imposed for each, and one of \$500 for want of the consular authentication, which, hitherto, has not been required of mail-steamers.

I availed myself of the opportunity to urge upon the intendente the suspension of the royal order of July 1, 1859, in view of the gross injustice it inflicts upon foreign commerce, while experience has shown the impossibility of ship-masters making out their manifests, in accordance with its provisions, and not incurring some one of its numerous penalties. I acquainted him with the instructions of the Treasury Department of the United States relative to fines upon foreign vessels for want of manifests; that such fines were not enforced without consulting the Department, and I asked that the same considerations be extended to our vessels, in the out-ports of the island, where it had been customary to impose fines and exact their payment before appeal could be made to the central authority.

I also called his attention to the fines imposed on our vessels at Manzanillo in 1868, which General Lersundi had ordered to be restored more than four years ago, and which had never been carried out by the proper department of the intendency. He took note of my suggestions and promised that they should have due attention.

It is due to this officer to state that upon his arrival here he found the greatest demoralization in his department, and that he is endeavoring faithfully to effect reforms therein. He makes, however, the usual mistake of his predecessors in supposing that any of these irregularities are to be attributed to the masters of foreign vessels.

I am, sir, &c.,

A. T. A. TORBERT,
Consul-General.

[Inclosure B.]

*Mr. Torbert to Mr. Fish.*UNITED STATES CONSULATE-GENERAL,
Havana, January 13, 1873.

SIR:

This matter of fines is giving a great deal of trouble to the American shipping arriving in the island. The intendente has adopted the rule that the captains shall know and manifest every article, and the weight of the same, that he brings, and for every error or mistake they impose a fine of \$25. If the bill of lading from which the captain makes his manifest is not correct, he would have (in order to comply with the rule here) to open every package and weigh the same. I told the intendente that he should not expect to make foreign ship-masters detectives for his custom-house, but that he should hold the goods and make the consignees responsible for any false entries in the custom-house. He says that would be better, but their law or orders puts the fine on the vessel.

Another annoyance is, that a vessel may arrive here with a cargo and be in port a month, reload, and when the captain goes to the custom-house to clear for sea, he may be told there is a fine on his vessel on account of some informality about his inward cargo. In many cases of this kind the fine (although manifestly unjust) has been paid rather than delay going to sea and knowing the time it takes to settle such things with the officials. A case in point I had recently: The American ship *Marcia C. Day*, of New York, arrived here from Cardiff on the 21st of November, with a cargo of coal; the captain's manifest called for so many tons, and that amount was entered by the consignees at the custom-house; the cargo discharged agreed with the captain's manifest. When the vessel was ready to go to sea, about the 4th of January, 1873, the parties were informed that there was a heavy fine on the vessel because the Spanish consul's certified manifest from Cardiff was one million kilograms less than the number of tons called for by the captain's and entered at the custom-house. The consignee informs me that he was told at the custom-house that the fine would be about \$8,000. I at once addressed a note to the intendente, with a memorial of the consignee, which was never answered. After waiting six or seven days, the captain determined to discharge his crew and abandon his vessel. I informed the intendente of his determination in a personal interview. He asked me not to do that, and I told him such would be the case if some decision was not promptly given in the case. The next day the vessel was allowed to go to sea without the fine being exacted.

There is a case pending now at Sagua la Grande of the American brig *G. de Zaldo*, which has been fined one hundred and forty-nine times, at \$25 each, for mistakes in manifest. One item on the manifest, one hundred kegs of lard, they say should be tierces, and they impose one hundred fines of \$25 each. Another item of two hundred and thirty-five barrels of potatoes, thirty-five turned out to be beans, and they place thirty-five fines of \$25 each, &c.

I am, sir, &c.,

A. T. A. TORBERT,
Consul-General.

[Inclosure C.]

SIR: We, the undersigned, citizens of the United States, and owners and agents of vessels trading between this port and the several ports of the island of Cuba, would respectfully state that the practice of imposing fines on vessels arriving in Cuban ports by the Spanish customs authorities thereof, for so-called errors in manifesting cargo, has become so onerous and burdensome that we feel constrained to solicit the interference of your Department in our behalf.

The Spanish laws require that a vessel bound for Cuban ports shall make out manifests of cargo, the same to be certified by the Spanish consul residing at, or nearest to, the port of loading, in which manifest the captain must declare positively and without qualification, the several and different kinds of packages, their marks, the generic class of contents, as well as the weights and values of the same, and for every instance where, on arrival in Cuba, the examination of the cargo shows a difference between the packages and the weights, and contents of same as actually found, and the same as manifested, the vessel is fined, while the goods escape all responsibility.

That although the *generic* class of the goods is stated on the manifest, in compliance with the requirements of the Spanish laws, and said manifests accepted and certified to by the Spanish consul, yet the vessel is fined for not stating the *specific* class.

That we are entirely dependent on shippers of cargo for information as to weights, values, and contents of packages shipped, from which to make out manifests, and irresponsible parties often give erroneous description of their part of cargo, resulting in fines imposed on the vessels, at times greatly in excess of the freight, against which we have no redress.

That the customs authorities at the several ports in Cuba place different constructions on the laws relative to vessels, and the manifests of same, and fines have been imposed in one port for stating that for which fines were imposed in another port for omitting.

That the captain is only informed of any fines imposed on his vessel when he attempts to clear her at the custom-house, whereby he has either to pay the fines or detain the vessel indefinitely while contesting the same.

That although we are willing and endeavor to comply with the said laws regulating manifests, yet, under the conflicting constructions placed on same by the different collectors of customs in Cuba, we find it impossible to do so, or to avoid fines.

In cases where fines are imposed, an appeal to the superior authorities at Havana is permitted on payment, under protest, of said fines, but unless the amount of such fine is excessive, the delay occasioned by the detention of the vessel would exceed in most cases the amount of such fine, even if recovered.

We would respectfully represent to the Department that as the vessel, through her agents, is entirely dependent on the shippers of cargo for information necessary to describe on the manifest the contents and weights of packages shipped, the propriety of imposing fines on the *goods* erroneously described on manifest, instead of on the *vessel*, as then the shipper would have a sure remedy against the vessel in case of error on her part or on the part of her agents in making out manifests, while under existing regulations it is in most cases almost, if not impossible, for the vessel to recover the amount of fines from the shipper.

Therefore your memorialists pray that the Department will take such action in the matter as may seem most advisable to obtain such relief in the premises as they may be equitably entitled to.

NEW YORK, *January 13, 1873.*

Waydell & Co.
James Henry.
R. P. Buck & Co.
John Chrystal.
Charles Cooper.
Snow & Richardson.
Oliver Bryan.
Samuel Duncan.
Lunt Dras. Brothers.
H. W. Loud & Co.
B. T. Thurlow & Son.
John Swan.
James E. Ward & Co.
J. H. Winchester & Co.
Miller & Houghton.

Hand & Swan.
Walch, Field & Way.
Simpson, Clapp & Co.
Henry Moss.
Carver & Barnes.
Evans, Ball & Co.
H. D. & I. W. Brockman.
Thompson & Hunter.
Brett, Son & Co.
R. H. Griffith.
B. J. Wenberg.
L. C. Wenberg.
F. Alexandre & Sons.
Boyd Hincken.
S. C. Loud & Co.

T. M. Mayhew & Co.
James W. Elwell & Co.
Abiel Abbot.
J. O. Ward.
Borland, Dearborn & Co.
Atlantic Mail Steamship Co.
A. W. Dimock, president.
E. Sanches y Dolz.
Warren Ray.
Snow & Burgess.
Jonas Smith & Co.
E. D. Hurlbut & Co.
Van Brunt & Brother.
I. B. Phillips & Sons.
C. H. Trumbull.

BOSTON, *January 28, 1873.*

Bridge, Lord & Co.
Aug't B. Perry & Co.
Gilmore, Kingsbury & Co.
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Hon. HAMILTON FISH,
Secretary of State, Washington, D. C.

No. 426.

General Sickles to Mr. Fish.

No. 770.]

UNITED STATES LEGATION IN SPAIN,
Madrid, October 23, 1873. (Received Nov. 12.)

SIR: Referring to my dispatch No. 757, of the 17th instant, in relation to the concerted action taken with the representatives of England and Sweden in this capital, with reference to the existing system of customs, regulations, and fines in Cuba, I have now the honor to forward herewith copies of the notes sent in to this government by Mr. Layard and Mr. Lindstrand on the 16th instant, in pursuance of our agreement.

I am, &c.,

D. E. SICKLES.

[Inclosure 1.]*Mr. Layard to minister for foreign affairs.*

MADRID, October 16, 1873.

M. LE MINISTRE: It has been my duty, acting under instructions from my government, to call the serious attention of the Spanish government, on various occasions, to the injuries inflicted upon British trade and shipping in Cuba in consequence of the fines imposed upon ship-masters by the custom-house authorities in that island for alleged violation of the customs laws and regulations. It is unnecessary for me to recapitulate the many complaints, on the part of British ship-owners and ship-masters, which I have been compelled to submit to the department of state with reference to this subject. Some of them still remain unredressed. But I would especially refer your excellency to a memorandum, dated the 14th December of last year, which I placed in the hands of Señor Martos, then minister for foreign affairs. Unfortunately, hitherto, notwithstanding the repeated representations and remonstrances of Her Majesty's government, the system of levying fines on foreign shipping in Cuba, which has led to so much injustice and to such grave hardships, has not been essentially modified; and even when the supreme government, recognizing that injustice and those hardships, has given orders that fines wrongfully levied should be remitted and repaid, its orders have either not been obeyed, or years have elapsed before the sums thus extorted have been returned.

I particularly beg to call your excellency's notice to the fact that the fines imposed upon the British vessels *Evening Star* and *San José*—so far back as June, 1869, in the case of the latter vessel—as far as I am aware have not to this day been repaid, notwithstanding the repeated remonstrances of Her Majesty's government and the repeated orders sent by the supreme government to the Cuban authorities for their repayment.

The great difficulty, I might almost say the impossibility of satisfying the alleged requirements of the Cuban custom laws, and of escaping the imposition of heavy fines, although there may be no intention whatever on the part of ship-masters to evade the revenue laws, but on the contrary every desire to comply with them, is partly caused by the many successive and contradictory orders, decrees, and circulars that have been published from time to time during the last few years, commencing from the royal order of 1st July, 1859. It is scarcely possible to ascertain what regulations are actually in force. It now appears that the English and French translations of the decree of 1837, containing the rules to be observed by the captains and supercargoes of vessels in Cuba, published officially by the Spanish government, differ essentially from the original, and ship-owners and ship-masters have consequently been led into error by trusting to those translations, and have inadvertently exposed themselves to heavy penalties.

With reference to the fines imposed for mistakes, omissions, or other irregularities in the ship's manifest, ship-owners and ship-masters complain that, by the Cuban customs regulations, they are unjustly made to suffer for the acts of others, over whom they cannot have any control. In making out their manifests, they are entirely dependent on the shippers of cargo for information as to the weights, values, and contents of packages shipped; yet, in consequence of false or inaccurate descriptions given of consignments, fines are imposed on their vessels, often largely in excess of the freight received. It

would be just that, whenever the manifest and the bill of lading agree, and the contents, weights, or value of any package be found on examination to differ from the descriptions of the same in the manifests, the penalty thereby incurred should be imposed on the goods in the said package, and not upon the vessel.

It further appears that the custom-house authorities at the several ports in Cuba place different constructions on the laws and regulations prescribing the form and contents of a ship's manifest. Thus fines have been imposed in one port for stating that for which fines were imposed in another port for omitting. As it is required that the manifest shall be certified in duplicate by the Spanish consul at or nearest to the port of shipment, the manifest thus certified should be accepted in any of the ports of Cuba as regular and sufficient in form. It, however, sometimes happens that fines are imposed upon vessels for an error or oversight committed by the Spanish consul himself; surely this is not just or reasonable.

It is likewise stated that ship-masters are only informed at the last moment before the departure of their vessels of fines imposed upon them; usually when application is made at the custom-house to clear the ship for another port. The vessel may consequently be indefinitely detained, and the owners exposed to the most serious loss and inconvenience, unless the fine, however unjust, be paid. It would seem reasonable that the custom-house authorities should make known to the captains or supercargoes of vessels all fines for irregularities in ships' papers within forty-eight hours after those documents shall have been delivered to the proper officer.

With the utmost desire on the part of ship-masters to conform to the requirements of the custom-house authorities in filling up the ship's manifest, they find it almost impossible not to afford some pretext for the imposition of fines, varying from \$25 to \$500. The most trifling mistakes or omissions, a mere verbal inaccuracy, expose them to heavy penalties.

There are certain points, however, upon which it is highly desirable that the supreme government should issue some distinct and authoritative declaration in order that doubts raised by the various interpretations given to existing orders and decrees should be removed. The principal appear to be:

1. Is a third manifest necessary in addition to the two required to be certified by the Spanish consul?
2. Is it necessary that foreign vessels should state their tonnage according to Spanish measurement?
3. Is it enough that the manifest state generally the class of merchandise, comprising the cargo, with the marks, numbers, and weight of packages, or must the contents of each and every package be particularly described? I would venture to suggest that whenever the manifest and bill of lading agree, and the contents of the packages are found, on examination, to differ materially from the description of the same in the manifest, the penalty thereby incurred should be imposed upon the goods and not upon the vessel.

I would further submit, to the end that foreign ship-masters entering Cuban ports may be relieved from the hardship and vexation of so many penalties imposed for trivial informalities in the manifest, that the certificate of the Spanish consul at the port of departure should be accepted as a sufficient authentication of that document. I would also suggest that the custom-house authorities in Cuba should be directed to make known to the captains or supercargoes of vessels all fines for irregularities in ships' papers within forty-eight hours after they shall have been delivered to the proper officer.

I need scarcely assure your excellency that Her Majesty's government, in instructing me to place before your excellency the above suggestions, has no desire whatever to question the right of the Spanish government to make and enforce such laws and regulations as it may consider necessary for the protection of its revenue. Her Majesty's government is convinced that it will be for the interest of both Spain and England, and will tend to the development of the legitimate commerce between them, if all unnecessary difficulties thrown in the way of British ship-owners, such as those I have described, be removed. It is, therefore, with confidence that I submit the foregoing statement to your excellency's enlightened judgment, believing, at the same time, that as his excellency, the minister for the colonies, is about to proceed on a mission to the Antilles, the moment is especially opportune for inquiry into a matter which so intimately concerns the friendly intercourse between the two nations.

I avail, &c.,

A. H. LAYARD.

His Excellency the MINISTER OF STATE, &c., &c., &c.

[Inclosure 2.—Translation.]

Mr. Lindstrand to Mr. Carvajal.

MADRID, October 16, 1873.

Mr. MINISTER: In a dispatch which I have just received, the government of the King, my august sovereign, referring to the desire expressed by that of the United States of America to obtain its co-operation in the representations which the minister of the United States at Madrid has been instructed to make to the Spanish government concerning the customs laws of the island of Cuba, instructs me to co-operate in such measures as it may be deemed necessary to adopt for the purpose of securing a modification of these laws.

While I have the honor hereby to obey this superior order, I think that it is not necessary for me to enter into any minute statements, inasmuch as the motives set forth in the note of General Sickles of this date are entirely in harmony with the views of the government of the King. The necessity of a simplification of the custom-house regulations, as well as of a mitigation of penalties, are therein clearly demonstrated; the obstacles which these laws place in the way of the development of international relations are constantly giving rise to complaints, which daily become more urgent on the part of merchants and navigators, and it is evident that the adoption of a new *régime*, which will do away with all annoying and superfluous formalities, and proportion the penalties inflicted to the offense, cannot fail to exercise the most salutary influence upon commerce between the island of Cuba and foreign countries. The time seems to me to have arrived for the introduction of the desired reforms, and I feel confident that the Spanish government, desirous of giving us evidence of the lofty sentiments which actuate it, will view this step with favor, and adopt a decision in accordance with the legitimate desires of those interested.

I avail myself, &c.,

LINDSTRAND.

His Excellency M. DE CARVAJAL,
Minister of State of Spain, &c., &c., &c.

No. 427.*Mr. Fish to Admiral Polo de Bernabé.*

DEPARTMENT OF STATE,
Washington, December 17, 1872.

SIR: I have the honor to acknowledge the receipt of your note of the 31st of October, 1872, in relation to the case of Augustin Santa Rosa. A perusal of the extracts from the dispatch of the captain-general of the island of Cuba (embodied in your note) induces the belief that the captain-general had not been put in possession of all the facts and circumstances of the transaction at the time of his writing that dispatch, and that a full and correct knowledge of these facts and circumstances would have led him to a different conclusion.

With a view to a clear and perfect understanding of the reasons for the immediate release of Santa Rosa, which I am now about to submit, I take occasion to state briefly the facts, as they have come to the knowledge of this Department from information deemed satisfactory. It appears that in June, 1871, Santa Rosa being then engaged in the insurrection, was hotly pursued by detachments from the forces under command of Colonel Laba Marin; that by flight and strategy he had several times escaped capture. On the 4th of July of that year Santa Rosa received a letter from Colonel Marin, in which the latter proposed to him that, if he would surrender, he, Santa Rosa, should receive a general amnesty and pardon for all his previous insurrectionary acts against the Spanish authority in Cuba, reserving only to the government the option of allowing Santa Rosa to remain in Cuba or banishing him from the

Spanish dominions. On the conditions just expressed, Santa Rosa surrendered on the same day the proposition was made, relying on the word of a soldier for the fulfillment of the conditions. Colonel Marin kept his word, and on the next day furnished Santa Rosa with a letter of general safe-conduct and intrusted him with written communications, to be carried by him to the insurgent camp. Exposure and hardship had so told on Santa Rosa that he was prostrated with illness on the journey, and was found insensible in the fields by three men, who took him to their hut. There he remained until the end of August, when a scouting party from the encampment of San Geronimo took him, with thirty-six others, prisoners, and conveyed them to the encampment aforesaid. There they took from Santa Rosa the communications from Colonel Marin to the insurgents, of which Santa Rosa was the bearer, Marin's letter of safe-conduct to him, and also the letter of Marin, which contained the proposition for surrender and pardon, thus depriving him of the best means of protecting himself from the punishments denounced against the insurgents. He was detained there until the 28th of September, when he was sent to Puerto Principe. Here the military governor, upon hearing the conditions of his surrender, at once discharged him. Two months after, on the 28th of November, he was again arrested, imprisoned, and with several others subjected to a military trial and examined as to the events of the insurrection and the capture of the steamer *Comandatario*. All the depositions and documents were forwarded to the captain-general, (Valmaseda,) and on the 14th of March, 1872, Santa Rosa was, by his order, released. Santa Rosa now turned his attention to earning money sufficient to defray his expenses to the United States, where his family were. Having secured this, on the 9th of July, 1872, he applied to the proper officer of police for a permit to go to Havana. It was granted. He proceeded to Havana by steamer; reached that city on the 13th of July, took up his lodgings at the Western Inn, and immediately reported himself to the commissary of police. On the night of that day he was arrested at his lodgings by this same commissary of police and three policemen, and the next day bound and taken through the streets to the public prison, where he is still held in close confinement on the charge founded on his participation in the capture of the *Comandatario*. After remaining in prison fifty-four days, on a visit of the Spanish admiral to the prison, Santa Rosa presented his case to him, and that officer assured him that if upon inquiry, which was then being made, he found the fact that Santa Rosa had been pardoned, true, he would release him. Santa Rosa, however, still remains in prison.

In the extracts from the communication of the captain-general which you have done me the honor to transmit in your note, the fact of Santa Rosa's pardon is conceded; the arguments of his excellency are directed solely to a limitation of its terms. The capture of the *Comandatario*, it is insisted by the captain-general, was a common crime, like that of robbery, murder, or arson; that it was, moreover, the crime of piracy, which is denounced by the codes of all nations, and therefore cannot be understood to have been included in or covered by a pardon for his insurrectionary acts. The circumstances attending the granting of the pardon; the terms of the pardon itself requiring only the one condition of his being allowed to remain or compelled to leave the colony—the status of Santa Rosa, his relation to and attitude toward the Spanish government at the time he accepted the pardon, all forbid its interpretation in the restrictive sense in which the captain-general claims that it must be understood. Among the Spanish authorities who were called upon to interpret this par-

don the captain-general stands alone in the construction which he claims for it. Colonel Marin, who represented the government in the negotiations which resulted in Santa Rosa's surrender, did not understand the pardon in this restrictive sense. The military governor at Puerto Principe did not so understand it; on the contrary, when he became satisfied of the facts and the conditions upon which Santa Rosa surrendered, he promptly released him. But the interpretation claimed for it on behalf of Santa Rosa has still higher authority to support it. After his second arrest in November, 1871, at Puerto Principe, before a military court of inquiry, with an army officer appointed to conduct the examination on the part of the government, Santa Rosa was interrogated touching the events of the Cuban insurrection and the capture of the Comandatario. The proceedings of that court, with the evidence, documentary and other, were submitted to the captain-general, (Count Valmaseda,) and with all the facts before him, on the 14th of March following, that distinguished officer ordered Santa Rosa to be discharged; and in pursuance of such order, and in accordance with the plain import of his pardon, he was again released.

It is not the nature of the crime which may be involved in the capture of the Comandatario that is now being discussed, but rather the character which attaches to that crime, growing out of the relation in which Santa Rosa stood to the Spanish government at the moment of his participation in that capture. If he was then in a hostile attitude toward the local government of Cuba, associated with the insurrectionists who were seeking the overthrow of that government, and aiding them in their revolutionary efforts, then his acts, in connection with that enterprise, (whatever views may be taken of these acts abstractly considered,) would be taken as a political offense, and must be understood to have been included in and covered by the proposition of pardon tendered on behalf of the government by Colonel Marin, and by which that officer secured the surrender of Santa Rosa. That this was the character in which Santa Rosa was held and treated by the local authorities of Cuba long prior to the date of the Comandatario capture, (May, 1869,) the public records of the government in Cuba will, it is believed, abundantly show as early as November, 1868, (the precise date is not known,) that Santa Rosa was arrested by the government authorities of the island, and confined in Moro Castle on a charge of being "chief of insurrection." From this imprisonment, it appears, he was released on the 13th of January, 1869, under a decree of general amnesty to all political prisoners, proclaimed by the captain-general, (Dulce.) Following closely on this release from confinement, Santa Rosa seems to have again joined himself to the insurgents, and the fact that he continued from thence up to the date of his surrender to Colonel Marin to maintain an attitude of active hostility to the Spanish government, and especially the Cuban authorities, is, I submit, clearly inferable from all the facts and circumstances of the case. At his trial, in November, 1871, before a military court-martial at Puerto Principe, he was called upon to answer for his past insurrectionary acts, among which his participation in the capture of the Comandatario was included. Upon what other ground than that the Comandatario affair was considered as a political and insurrectionary crime could it have been embraced in those proceedings?

There is still another consideration which, it is believed, should have great weight in determining the matter in dispute in favor of Santa Rosa. Colonel Marin, who represented his government in the transaction of the surrender and pardon, and Santa Rosa stood in the relation to each other of soldiers in opposing and hostile forces; Marin proposed to Santa Rosa

that he should surrender and cease his warfare on the government on condition of his receiving a complete and full amnesty and pardon. The conditions were accepted by Santa Rosa. He immediately surrendered. If there is any ambiguity in the terms of the agreement, it is a universal rule of construction, nowhere held more sacred than in Spanish law, that that sense must prevail against either party in which he had reason to believe the other party understood it. It cannot be believed that, with any other understanding than that now claimed by him, Santa Rosa would have accepted the proposal for surrender. It may also be assumed, without any violence to truth, that during the progress of the insurrection, which has unfortunately existed in the island of Cuba for the last four years, acts have been committed by the insurgents involving the lives of innocent persons, the robbery of individuals, and the burning of private property; but it surely will not, therefore, be contended that if one of the rebel chiefs should surrender, on condition of receiving a complete amnesty and pardon for his insurrectionary acts, he would still be amenable to trial and punishment for a murder, arson, or robbery committed during and in the course of his active rebellion and war against the government.

With the appreciation I entertain of the sense of justice and honor which animate the authorities of the Spanish government in Cuba, I cannot permit myself to doubt that, upon a further consideration of the facts and circumstances connected with the case, the captain general will see the justice and propriety of ordering the immediate release of Santa Rosa.

I avail, &c.,

HAMILTON FISH.

No. 428.

Mr. Fish to Admiral Polo de Bernabe.

DEPARTMENT OF STATE,
Washington, January 30, 1873.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, transmitting a copy of a communication addressed to you by the captain-general of the island of Cuba, bearing date the 20th ultimo, and relating to the proposed renting by the colonial government of certain embargoed estates situate in that island, but owned by persons who are known to be citizens of the United States.

Referring to three telegrams, those recently received from you by the captain-general, apprising him of my protest against the proposed renting of the estates of Raman Fernandez Criado, Thomas de Mora and Martin Mueses, and (following the language of the captain-general's communication) "some other Cuban or American, whose name cannot be understood from the translation made of said telegrams," the captain-general proceeds to say that the renting of property advertised to take place on the 18th of that month (December) would in nowise prejudice the question nor place any obstacles in the way of the settlement of the pending claims, either of the persons then in question or of those of any others in the same situation. Whatever force might attach to such a proposition if applied to the general question of the estates proposed to be rented, when applied to the cases of Criado, Mueses, and the two de

Moras, becomes inapplicable, and indeed it is difficult to imagine by what process of reasoning the conclusion to which his excellency the captain-general seems to have arrived could have been reached in reference to the estates of the persons named in his communication to you.

No questions in relation to the claims of these several persons for the release of their estates which had been placed under embargo were then pending. The questions relating to the release of these several estates had been already settled and the release of the property ordered by the government of Spain. This Government has received from that of His Majesty the King repeated assurances that these orders would be speedily executed, and I am advised by a telegram from General Sickles, which I had the honor to read to you, that so late as the 17th instant, the minister of state at Madrid expressed his surprise and regret at the continued delay in executing the orders for release in the cases of Thomas de Mora, Criado, Mueses, and Mrs. de Mora. To say that the leasing, by authority of government, of property for a term of three years would place no obstacles in the way of the settlement of claims of the owners of that property, seems to be the enunciation of a contradiction. The owners' right to the immediate possession and enjoyment of his property is not only absolute and guaranteed by treaty, but has been admitted, recognized, and declared by the government at Madrid, while that in Cuba seizes the estate, excludes the rightful owner and undertakes to put a stranger in possession of the property, not only without the consent but against the will of the owners. No matter what conditions may have been incorporated in the lease, the occupancy by the tenant of the government deprives the owner of the possession of his property for the time being, and is a practical, absolute, and formidable obstacle to his attainment of his rights. I must, moreover, call your attention to the fact that the very act of renting the estate but too plainly manifests a postponement and delay, if not a non-compliance on the part of the government with its promise of a release of the property, and subjects the owner to new and further proceedings to recover its possession, and may involve him in protracted litigation.

It is added that, by a provision in the contract, the lessee is required, in case of a settlement of the claim, to surrender the property before the expiration of the term of the lease, but it must be remembered that in the mean time the lessee may commit waste upon the property and otherwise damage it, and it is not alleged that any provision has been made whereby the owner of the property is secured any recourse against the lessee, whom the government puts in possession of his estates, either for indemnity against damage done the estate or for compensation for its use and occupation. That these estates are leased by the Spanish government because, as the captain-general alleges, of a disinterested desire on its part constantly to improve the management of the property, would scarcely in any case be considered by the owner of the estate a satisfactory reason for such action. Governments are not often the most economical or judicious managers of private estates, and all persons naturally claim the right of managing their own property, and insist upon being the best judges of the means to be used for its improvement.

Still less can such a reason avail to justify the action of the government of Spain in relation to the estates of Criado and the others named; for in these cases the order for the restoration of their property and estates had already been pronounced by the supreme government of Spain, and the only obstacle then (the time of the proposed renting) existing, to these parties managing their own property and reaping the profits of

its products, was the failure of the Cuban authorities to carry into execution the orders of the government.

In relation to the application of Thomas J. Mora for certain documentary evidence from the record of mortgages, deemed necessary in procuring the restoration of his property, it is urged by the captain-general that this is not a governmental question, but one to be settled by the party interested, or his attorney, in the ordinary courts. The correctness of this, as the statement of a general proposition, is readily perceived and at once admitted; indeed, his excellency might have stated the rule still broader, and asserted that copies from the public records affecting the title to real estate should be procurable upon the simple application of any citizen interested in such record, as is the rule and the practice in the United States. In this case, however, the authorities in Cuba require the production by a citizen of the United States of that which is under the control of their own officials, and upon application being made by the citizen to the proper officer for the required document the official refuses it. This is Mr. Mora's case; and the course just stated as having been pursued by the Cuban authorities in regard to it involves a violation of the plainest principles of right and equity. It affords me, however, sincere satisfaction to receive the assurance of the captain-general that he will use his personal efforts to facilitate the procuring of the desired document by Mr. Mora or his attorney, and the high personal character and reputation for honor and integrity of that distinguished officer, together with the traditional sensitiveness of Spain in the observance of right and administration of justice, lead me to indulge the confident hope that his efforts will be successful, and that no technicalities of colonial administration will be allowed to delay justice or to interfere with the execution of orders and the fulfillment of promises made by the government of His Majesty at Madrid.

I must again press upon your attention the earnest desire of this Government that in the several cases of the estates of Criado, Mueses, Thomas de Mora, and Mrs. de Mora, in which a release of the property from embargo has been ordered by the government of Spain, the fulfillment of the order and the restoration of the property may be no longer delayed by the officials in Cuba charged with its execution.

Accept, sir, &c.

HAMILTON FISH.

No. 429.

Señor Castelar to Admiral Polo.

[Received from Spanish minister March 6, 1873.]

MINISTRY OF STATE, POLITICAL SECTION,
Madrid, February 12, 1873.

MOST EXCELLENT SIR: You have already been made aware by the telegrams transmitted from this ministry that the sovereign assembly of the Spanish nation has proclaimed a republican form of government as the definitive form of the government of the State. This act has not been brought about by revolution; it has not been born of stupor and amazement; no, it has been born of the profound conviction and of the sovereign will of two legislative bodies, which, having recently been chosen by universal suffrage, based upon full authority and exercised in

perfect peace, became convinced that, under existing circumstances long since foreseen, such was the national sentiment.

While doing full justice to the sentiments of loyalty, to the enlightenment and the constitutional sense of the monarch, it is but fair to say that he could not overcome the innate repugnance of this proud nation to anything that could be construed, whether rightly or not, to impair its independence. This being the case, the king, with lofty and dignified patriotism, decided the conflict by abdicating the throne of Spain, both for himself and his successors.

His purpose being known, and his abdication having been made public, there was but one opinion among all parties, one thought, that of the imperious, irresistible, and supreme necessity of substituting a republican for the monarchical form of government.

The Cortes of the Spanish nation, with high patriotism, with a political perspicacity of which there are few examples, and with a loftiness of views natural to our enlightened race, rose grandly to the demands of the hour, carrying out the public will, and establishing the form of government which belongs to democracies, viz, the republican form. No inward or outward pressure, no threats, no tumults, influenced their deliberations. The people were quiet, the army obedient, all the authorities in the peaceful exercise of their functions, when, by the vote of both houses, convened as a national assembly, we passed, pleasantly and tranquilly, to the new order of things.

The national government, composed of the representatives of the people, was then appointed, as your excellency is aware; and this government, having met immediately after, resolved to use all the means at its command, all its energies, to execute the mandate of the assembly, and to preserve public order at whatever cost.

I hope, therefore, that your excellency, being actuated by your enlightenment and patriotism, will inform the government to which you are accredited that the republican form is that which has been definitively adopted for our government, and that, in order to sustain and establish it, we rely upon that respect for the laws which characterizes the Spanish people, and which has been so admirably demonstrated during the past four years of democratic rule, and on the fidelity of the army, which is resolved to sustain the new form of government.

Try, your excellency, to dispel all prejudices; seek to inculcate the idea that this republic represents the national will and furnishes a guarantee of public order; endeavor to demonstrate its pacific character, both at home and abroad; and, finally, endeavor to show that our country possesses those virtues which are necessary among nations fit to govern themselves. Dispel the erroneous impressions which may prevail in other countries in regard to the attitude of the army; as we are resolved to sustain and improve its organization, so is the Spanish army resolved to maintain our authority, which is legitimate, as born of the will of our people.

Be pleased to read this dispatch to the Minister of Foreign Affairs at Washington, and to leave a copy of it in his hands.

God, &c.,

EMILIO CASTELAR.

No. 430.

Señor Castelar to Admiral Polo.

[Received from Admiral Polo March 20, 1873.]

MINISTRY OF STATE OF THE SPANISH REPUBLIC,
POLITICAL SECTION, *Madrid, February 25, 1873.*

MOST EXCELLENT SIR: The Spanish nation has solved a most difficult problem—that of changing one form of government for another without trouble or turbulence, as if it were accomplishing a natural transformation, long prepared by the firmness of its resolutions, and brought in proper time by the logic of events. Spain has passed from the monarchy to the republic—has passed peacefully, legally, in the plenitude of her authority and the exercise of her sovereignty.

It would not be astonishing if, on seeing this great transformation, those charged with the maintenance of social stability attribute it to the sudden caprice of a people in delirium, when it should be attributed to their mature and well-judged desire vigorously to embody in themselves the spirit of modern times, and assume a brilliant place in the amphictyonic council of Europe. All who have taken the pains to consider our character and read our history, will find among the qualities of the Spanish people a respect for their traditions which rises to a worship, and a constancy in their ideas which borders upon tenacity.

Among the ideas most warmly cherished by our grave people, that of monarchy has always been pre-eminent; it has always been their gonfalon in battle, their consolation in misfortune, the highest personification of their authority, the depository of their glories, in whose warmth they have lived so many centuries, and under whose shelter they have aggrandized the national territory in lengthened struggles.

But it is needful to make clear and loud declaration that the world may understand that in our country the monarchy was dead in the higher ranks of society before the monarchical spirit was extinguished in the conscience of the people. Perhaps in antagonism to popular instinct, perhaps in antagonism to popular faith, and for reasons special, national, peculiar to our history, and apart from the European movement, the monarchical institution has disappeared from among us. The day that a crowd of courtiers, commingled with a crowd of the people, angrily pushed forward, under the impulse of a plot hatched in the palace, defiance on their lips, and contempt in their breasts, to disturb the tranquil majesty of their monarchs in the royal residence of Aranjuez itself, history registers in its annals the beginning of the judgment of the Kings by their vassals, and the end of the old Spanish monarchy. Shortly after this event, the time-honored institution which dominated Europe and discovered America solemnly ceded its own country to the foreigner, and the war of independence, although it always invoked the monarchy as its divinity, manifests disobedience to the express will of the Kings on the eve of a gigantic struggle with the genius and fortune of the conqueror.

Three times since then it has been attempted to revive the old monarchy with the new spirit. The constitution of 1812 formed the democratic monarchy; that of 1837 the parliamentary monarchy, and that of 1869 the elective monarchy. Our people struggled to preserve their traditional and historical organization. After so many trials, made in good faith, inspired by the ancient monarchical sentiment, and by the respect of our legislators for the form of government established throughout

Europe, it is certain, nay, more, indubitable, that to-day the race of kings is run in Spain; that to-day none of the ancient dynasties, none of the new pretenders, can boast of mustering all parties on his side, or of interpreting the national sentiments.

Such is our situation, coldly considered. It is impossible to inspire faith in the stability of the monarchy, and in the pacific transmission of its privileges by hereditary right, in a people who have seen pass before their eyes so many monarchs; it is impossible to deny that an institution so strong and so firmly implanted by ages in our customs could not have fallen from its height by the conspiracy of parties, by speeches from the tribunes, by cries of the people or of the army, but only by the internal disorganization which has inevitably caused its death.

The monarchy having disappeared by a number of domestic—purely domestic—causes, inherent in our history and our peculiar character, the republic appears of itself, of its own virtue, by the law of necessity, as some organisms appear behind others in the bosom of nature. And this virtue of political principles, this complement of the historical laws, was imposed the more strongly after the revolution of September, which was applauded by the people and recognized by every government. The princes dethroned who had the privilege of representing the ancient tradition, natural rights proclaimed in all their extension, universal suffrage recognized in all its latitudes, religious liberty acclaimed in all its purity, the principle of popular sovereignty consecrated in all its truth by the sanction of the laws and the right of victory, the powers emanating from the election, the natural organization of these principles—the inflexible and fatal result of this movement was found, by forces superior to the will of man, in the proclamation of the republic. The governments of Europe who recognized the legitimacy of the principles of the revolution will not be able to deny the legitimacy of its consequences; those who recognized the powers emanating from that act will not be able to deny the definite and stable regimen which has been necessarily and logically derived from that act.

The Constituent Cortes of 1869, whose patriotism and wisdom will be recorded with applause by history, determined from the first moment of their life to proclaim the monarchical form of government, which they did for three fundamental reasons: First, because it corresponded with the traditions of the Spanish people; second, because they (the Spaniards) believed it would secure the liberal principles of the revolution; and third, because it would harmonize their form of government with those existing in nearly every part of Europe. But all these designs were dashed to pieces by the obstacles of reality. We had a monarchy, but no monarch. Among us we had not one of those dynasties that represent religious and national principles united to modern spirit, such as are represented by the dynasty of England; neither had we princes and kings like those who have formed, in diplomatic councils and on fields of battle, the unity of Italy and that of Germany. Our dynasties, some defeated in civil war and others dethroned by revolution, could not present, as a glorious title, the stability of the dynasties which even yet represent the genius of Peter the Great and Charles V. We were not united to the monarchical form of government by international treaties, like Belgium, Holland, Greece, and Roumania. We had to look for a king in foreign lands, running double risk—the exterior risk of disturbing the peace of Europe, and the interior risk of wounding the national sentiments. None of the powers who believed themselves concerned in the maintenance of the monarchical *régime* here smoothed our road. They all eluded giving us their concourse by respectful observations or

formal negatives. And sad experience soon demonstrated that the best thing for the domestic tranquillity of Spain, and the most certain for the peace and stability of Europe, would have been to keep ourselves in our own shell, and tranquilly and peacefully establish, as we do now, a modest republic.

But the Cortes, believing themselves committed to the introduction of a monarch, searched for one in foreign lands and brought him here. He was of an illustrious line and gallant temperament. He was united by political interests and recent records to the greatest powers of the world; to France by the war of 1859, to Prussia by the war of 1866, and to Great Britain by the establishment of the constitutional monarchy in Italy. He was instructed in the highest examples, and inclined to respect the national representation. He counted on the support of all the parties who effected the revolution, from the most conservative to the most radical; but, nevertheless, all these political, historic, and diplomatic advantages of the young and courageous prince were not enough, no! to resist the most earnest sentiment of our race—the national sentiment.

This sentiment has opposed him in all his designs, and at last has vanquished him. This sentiment left him in such solitude that it was complete asphyxia. Whoever believes that there existed here a mysterious conspiracy against the young prince is deceived. The Cortes respected his rights; the ministers called to power seconded him zealously, and the ministers deposed obeyed him respectfully; the army fought for his authority, the towns received his commissioners, and justice was done in his name; nobody disputed any of his prerogatives, or murmured at any of his privileges; but nevertheless, under all the appearances of power, he felt that he was completely wanting in the highest and strongest power—the power which is born of public opinion, and which is based on the love of the people. And he renounced for himself and his family a crown of which he only felt the weight on his brows and not the dignity in his soul. What was to be done after this supreme moment? Was the King to be asked to withdraw his abdication? It would be unworthy of us. Should we return to the past and hand over to a dethroned dynasty the guardianship of the people? Impossible. Should we create a military dictatorship? Absurd. Should we revert to another period of provisional administration? Dangerous.

Up to this there were two methods of solving all our revolutionary crises: During the period that might be called that of action, the juntas; during that of solutions, the Cortes. In the present instance we confined ourselves within the limits of the strictest legality. There was no need to have recourse to revolutionary expedients, and the juntas were useless. There were only political difficulties to be settled, and the Cortes naturally suggested themselves. In the absence of the supreme power, the Cortes took upon itself all power, and in so doing realized a thought which, if it had not been expressed, had been foreseen in the latest committee meetings. The exponent of the national will, borrowing its inspiration from the ideas uppermost in every mouth and the sentiment born in every heart, obeying the supreme laws of political necessity, faithful to the incontrovertible logic of facts, the Cortes proclaimed the republic—proclaimed it in the plenitude of its authority and the exercise of its power, after sober and solemn deliberations, uninfluenced by pressure from without or menace from within, leaving to a Cortes Constituyentes, which should be convoked in due season, and elected in entire freedom, the organization of powers within the republic.

Thus it is that we possess a government national by its character, pop-

ular by its nature, legitimate by its origin, solid by its organism, definitive in its foundation, stable by its long preparation, and with tendencies to preserve and strengthen the peace of Europe. Here, in those profound changes, is seen no violent revolution; no! on the contrary, we have but a necessary evolution. We had individual rights promulgated in formulas as ample as those of the Federal Constitution of the United States; we had the suffrage extended to every citizen; we had, although it might not have been all that we wished, great municipal and provincial autonomy; we found ourselves without a king by the renunciation of the throne by the monarch for himself and his descendants. Under these circumstances the Cortes, the true power of the state, have proclaimed the republic. All this is explained by the reasonable laws of logic, and all is built on the legitimate bases of the constitution.

The republic is not provisional; no, whatever its interior organism may be, the republic is definitive. Thus the legality of the republic has not been questioned by anybody in Spain. The Cortes, which provided for the absence of the monarch, and undertook the national defense in the epic years from 1808 to 1814; the Cortes, which abrogated the rights of Don Carlos to the ancient order of Spain; the Cortes, which hastened, as far as they could, the majority of Doña Isabel II; the Cortes, which recognized and sanctioned the dethronement of the Bourbon dynasty; the Cortes, the most permanent power in our nationality, inasmuch as the kings have disappeared and they have remained; the Cortes, as the proper incorporation of our feelings, proclaimed the republic, and an entire people in both continents, wherever our flag floats, has acknowledged and respected the legality of the proclamation.

Observe the conduct of the authorities. As soon as they received notice that the republic was proclaimed they gave it spontaneous greeting. The captain-general, as well as the civil governors, the magistrates of all the territories, as well as the alcaldes of all the towns, manifested their adhesion to the assembly and their obedience to the government. The conservative classes have recognized the necessity of this transformation, and the clergy have confessed that they hope to see religious independence and their right of association made more secure by the liberty of our recent institutions than by the protection of the last monarchies. The army has proclaimed the republic everywhere with fervid enthusiasm.

It is necessary to destroy the false conceptions rooted in Europe respecting the conduct of our army. There is a common belief that it has risen of its own free will to erect a military dictatorship and assume its predominance over the other classes of society. The Spanish army, an army of liberty, of country, of independence, has some errors to its score, some shadows on its history. I repeat but the truth when I say those shadows are exceptional. Never has the Spanish army constituted a military dictatorship. In all times when oppression was hardest, arrogance most insolent, the principle of right forgotten, individual security trampled under foot, and the laws set at naught, the army, sprung from the people and inspired by the thought of the people, has turned its weapons against tyranny and in favor of liberty. Those antecedents satisfy us that in any contingencies which may arise in the future we shall possess an army for the country as for the republic.

It is most important that the false idea of our country being ungovernable and self-willed should be destroyed. A long separation from public life, by the blind faith she had in kings, eclipsed in her spirit those virtues she once showed for governing in the parliaments and municipalities of the middle age. But, with her conscience full of ideality and

her heart of enthusiasm, both brave and modest, valiant and prudent, as serene and as self-possessed in the chances of war as in political crises, accustomed to obey and respect the elective authorities—thanks to her deeply-seated municipal habits—with austere republican dignity, even when under the monarchy, and with the personal independence of the most illustrious races as the basis of her character; sometimes fanatic, but always so for ideas; disinterested even to abnegation, and patient even to martyrdom, it can well be assured that she will live the difficult but wholesome life of liberty.

Europe entire must understand that the most constant and tenacious desire of our nation is to govern herself. Our character is not open to those caprices which might cause us to fear a fall from the republican institutions to anarchy or a dictatorship. Whenever the Spanish people have made at the true opportunity a political progress, they have preserved it with true constancy. Since 1836 we have had constitutional institutions, in form more or less free, and we have never lost them, employing, even in the midst of the greatest revolutions, their proceedings to enter into full democracy. The government of the republic is to-day resolved to give to the people an electoral liberty so great and general that they may express their ideas and aspirations with a sincerity not always used. We will assiduously prevent all official and bureaucratic influence, and we will punish with equal severity the violent pressure of political parties and of the mob. We will give every security for the most timid to exercise their rights, and we will uphold the respect every elector owes to other electors and to his own sovereignty. Those who know the public life of those who have had the undeserved honor of having founded the republic, know we will faithfully keep our words.

The governments of Europe should have the same security. Our proposals must make them comprehend, sooner or later, that we are a legal power, not composed in any manner of conspirators, but of legislators accustomed to frame and obey the laws.

And we, so jealous of our autonomy, of our independence, will never conspire against the autonomy or independence of other nations; so that, in our internal politics, as well as in our foreign relations, we have only to inspire ourselves with the eternal principles of justice.

Consequently, I have a special charge from all the members of the executive power to make it understood that our republic will not be a hot-bed of discord in Europe. These changes and transformations are completely internal, and have no relations whatever with the different political and international problems in the world. Our great separation from all European influence (which has sometimes mortified our Spanish pride) now serves providentially for the regeneration of this our beloved country. We do not owe anything to those who agitate the world from the great cities, which may be called the cosmopolitan cities, the capitals of intelligence and of ideas. We were considered a dead people, great because of our glories, but with the grandness of ruins, after the manner of those empires buried underneath the valleys of Asia. Spanish democracy, in generous vengeance for this forgetfulness, discussed her destinies with herself, harmonizing the progressive ideas of the times with the national spirit. Thus she has never had, and has not now, that vague cosmopolitanism which might cause alarm abroad, nor those Utopian dreams which might cause difficulties without number at home. We have a republic entirely our own, born of the national feeling. Even if we intended any other thing our geographical position imposes this policy on us, exclusively Spanish. It is unnecessary to say that we do not desire any annexations to or increase of our territory. A republic in which, like our own, there are so many municipal elements, cannot be a conquering

republic. Its own nature subjects it to this idea, to organize its powers in the best possible manner, and to educate its citizens into elevation. We have territory enough for our activity in the world. We desire to preserve it, and we will preserve it at all cost and in all its integrity. But we should be ungrateful if we attempted to increase it, and all the more by conquests, either directly, which might expose us to the undesirable glories of war and to the dangerous chances of Cæsarism; or indirectly, which might cause us to forget in others the principle we love above all in ourselves—the principle of national autonomy.

I repeat it, and will do so a thousand times. For the independence of Spain, for the dignity of Spain, we have the same worship as all the Spanish generations. We neither wish nor need anybody to recognize our right of governing ourselves. We feel ourselves so equal to it, that the conviction of our strength and the austere conscience of our authority are enough for us. The great nation that occupies the north of the American continent, in spite of the distance, has immediately recognized us, and has communicated to us its fervent sympathy for this nation, which has discovered with prodigies of genius and valor the road of liberty and democracies. The Swiss Confederation has just followed the example, and has blessed our new-born republic from its holy mountains. These two acts of two free countries, of two democratic countries, of two republican countries, of two countries friends of all the powers, strengthen us and demonstrate to us that they have no fear of our not deserving the greatness which the new institutions promise to us, or of our staining with excesses the name of modern democracy. I have a right to hope that the rest of the world, after my loyal explanations, will hold back no longer. It would be unworthy of me, it would not be representing the energy of my nation and of my race, if I placed my faith in fantastic dreams. We have great and immense difficulties to overcome; complications will appear in the pursuance of our line of action, and the dangerous change from one form of government to another. They have never been hidden from our sight and our patriotism. What we can say is that, for the whole time we occupy our posts, we are resolved to strengthen interior order, and to respect the peace of all Europe. But, ah, let not the foreign nations ask us for energy, and then deny us the only thing we ask them—their moral help—so that, as we have founded our republic in legality, we may consolidate it in the most perfect order and the closest amity with all the nations and governments of the earth.

If your excellency will look into the ideas I have expressed, you will find it easy to second the designs of the executive power of the republic; and I hope that, from your zeal for good service, you will be able to expound them at a fitting time and occasion to your minister of foreign affairs, to whom I hope you will read, and, if he desires it, give a copy of the present dispatch.

EMILIO CASTELAR.

No. 431.

Mr. Duffie to Mr. Davis.

No. 375.]

UNITED STATES CONSULATE,
Cadiz, July 27, 1873. (Received August 26.)

SIR: I beg to inform you that hostilities commenced between the dock-yard and volunteer forces on the 22d instant, at 11.15 a. m., and con-

tinued with great force all that day and the day following, but with few casualties on both sides.

On the night of the 23d, at 11 o'clock p. m., a respectable person of this city came to inform me that a boat bearing a flag of truce, and commanded by the son-in-law of the admiral of the dock-yard, bearer of a dispatch for the French consul, had been seized and the officer imprisoned, and wishing me to use my influence in procuring the liberty of said officer.

I proceeded to the "*comité de salud publica*," and had an interview with the president, and found it was impossible to obtain the liberation of said officer, as the flag of truce was used by him for visiting the British iron-clad *Triumph*, and not the *comité*. During my interview with the president and *comité*, they gave me to understand that they were tired and sorry of having commenced hostilities, and insinuated that they would be pleased to have matters arranged. I then offered my services toward this end, which they immediately accepted, with the understanding that everything should be considered strictly private and confidential, giving as a reason for this that the volunteers might create disturbances, thinking that the *comité* intended to compromise with their adversaries.

The *comité* gave the following conditions for treating for peace with the admiral:

That the admiral and the troops might evacuate the dock-yard with the honors of war, by land or with the fleet. That the arsenal and its dependencies should be delivered over to the *comité* of the canton of Cadiz.

The president of the *comité*, notwithstanding not wishing to take upon himself the entire responsibility of this affair, at the time of giving me said conditions, requested me to consult them with the general commanding the volunteer forces at San Fernando.

On the following morning, at 7 a. m., I proceeded on a special train with my vice-consul, Mr. Younger, and accompanied by two members of the *comité*, to San Fernando, where I had an interview with the Brigadier Egina, and these two members, who were not of the same opinion as the *comité* at Cadiz, but resolved that the following propositions should be presented to the Admiral Arias, of the dock-yard:

That the garrison troops of the dock-yard would be allowed to evacuate the place with the honors of war and their arms; but the seamen to leave disarmed, but none of the vessels of war should leave the arsenal. That a sufficient number of officers should remain to deliver the arsenal and all its appurtenances in due form.

Both myself and vice-consul considered these terms too humiliating, and used every endeavor to have them modified, but without effect; and although we considered them utterly unacceptable, but for the sake of humanity, and wishing to stop the effusion of blood, for a short time at least, I wrote a letter, of which I inclose translation, to the admiral, and after some delay, caused by the volunteers in front refusing to allow their officers to hoist the white flag until it was accompanied by the United States colors, I received the admiral's reply, as per translation herewith.

The commander of the volunteer forces having given me his word of honor that all works pending should be stopped immediately, I proceeded with my vice-consul down to the dock-yard, where we were received with all honors and the greatest attention and friendliness by the admiral and his staff. The terms of which I was bearer were instantly and indignantly rejected; the admiral, besides stating that having re-

ceived the command of the dock-yard and its dependencies from the government, he would nor could not deliver it but to the government, adding also that, having re-enforcements, the dock-yard was in a state to defend itself against the volunteers for at least three months, being sufficiently rationed and having abundance of ammunitions.

During our conference with the admiral he frequently expressed his desire of terminating that unfortunate state of affairs, and to this effect charged us with the following propositions to the *comité* of Cadiz:

That a truce of six or eight days should be agreed upon, during which time the two belligerent parties should suspend all hostilities and works, and remain within their lines; and during said period the *comité* of Cadiz should send to Madrid commissioners to treat with the government regarding the course the admiral should take, either continuing to defend his command or delivering it over to the *comité*.

On our departure we received the same honors and civilities from the admiral, who instructed us to inform the general of the volunteers that during our negotiations he would suspend hostilities, if not fired upon by his adversaries.

On our return we laid the conditions of the admiral before the authorities at San Fernando, who, although they personally refused them, would not take upon themselves the responsibility of giving a decided answer before consulting the *comité* at Cadiz, for which purpose they, on our return to Cadiz, accompanied us, at 7 p. m.

On the 25th, at 2 p. m., the *comité* informed me that the admiral's propositions were rejected, whereupon they placed a steamer at my disposal, in which I and my vice-consul proceeded to the arsenal, to inform that there were no apparent probabilities of arriving to a peaceful solution of hostilities.

The admiral received our information with marks of great regret, but assured us that he could not grant other terms, and that he should commence hostilities the next morning at 8 o'clock a. m., precisely, and would not cease until the volunteers were disarmed and re-organized under the true principles of order, of republicanism, of all of which we informed the Cadiz *comité* at our return.

As the admiral had said the day before, the dock-yard and squadron recommenced hostilities on the 26th, at 8 o'clock, a. m., precisely, which was promptly replied to by the batteries of the volunteer forces, and a heavy cannonade, chiefly from the arsenal, was kept up the whole day.

As my dispatch would be incomplete without giving you further details regarding the state of the dock-yard and volunteer forces, and the reasons which have caused this serious conflict, I beg to inform you, with all impartiality, that on my visit at San Fernando I found the volunteers greatly disheartened, unruly, and disorganized, in general confessing themselves tired out, and wishing for peace.

At the dock-yard, on the contrary, I found, to all appearance, everything in the greatest order, good discipline, and enthusiasm among the troops and navy. The dock-yard and squadron did not receive the least damage during the first two days of hostilities, and only had one man slightly wounded.

The positions of the volunteers had, however, been more roughly handled, as the naval college, the barracks, railway-stations, and other places, showed marks of better firing, they having had, besides, several killed and wounded.

The first gun at the commencement of hostilities was from the volunteers.

The chief instigator of these disturbances is a man called Mota, mayor of San Fernando, and who, with 600 or 700 volunteers of the

lowest class, instigated the volunteers of Cadiz to take part in the operations against the dock-yard, it is said, with personal views of revenge, as he formerly held the position of boatswain and was dismissed in disgrace.

It is rumored to-day that he has been assassinated by the volunteers, of which I have no doubt, as he had many enemies in the *comité* of Cadiz.

I am, &c.,

A. N. DUFFIE.

[Inclosure 1.—Translation.]

Mr. Duffie to Admiral Arias.

SAN FERNANDO, *July 24, 1873.*

YOUR EXCELLENCY: Wishing to pass over to that arsenal for holding (accompanied by my vice-consul) a conference with your excellency, and having obtained from the chief of the volunteer forces a suspension of hostilities during said conference, I have to beg of your excellency if we can pass into the arsenal, the firing ceasing also on the part of the forces under your excellency's command during said period.

I am, &c.,

A. N. DUFFIE.

[Inclosure 2.—Translation.]

Admiral Arias to Mr. Duffie.

ARSENAL OF THE CARRACA, *July 24, 1873.*

SIR: In reply to your letter, which I just received, which was brought by a person who was permitted to enter this arsenal on account of having presented himself bearing the flag of the United States of North America, I have to say that your person, as well as that of the vice-consul of the United States, will be admitted as soon as you present yourselves in this arsenal, and I will have the pleasure of verifying with you the conference which you desire.

In due deference to the character and your representation, I give orders for the suspension of hostilities as long as the enemy does, but informing you that my adversaries are erecting works for augmenting their means of attack; considering this militarily, it is the same as a continuation of firing on their part, and thus I ought not nor cannot consent to the said suspension, if the enemy does not suspend the works which they commenced.

I am, &c.,

JOSÉ RODRIGUEZ DE ARIAS.

No. 432.

Mr. Duffie to Mr. Davis.

No. 378.]

UNITED STATES CONSULATE,
Cadiz, August 5, 1873. (Received August 26.)

SIR: I have the honor to inform you that, yesterday at 1 o'clock a. m., the consular corps received a request from the *comité* of public safety to repair to their headquarters, situated in the custom-house of this city.

The consular corps acceded to their request, and on arrival were informed by the president, Mr. Salvochea, that the *comité* had resolved to resign their authority into the hands of the consular corps.

A conference among the consuls took place, after which it was decided to accept the transitory power with which the resignation of the *comité* invested them, chiefly for humanity's sake and for stopping the shedding of blood, as at 2.30 o'clock a. m. firing commenced in the city between the artillery troops of the line and the volunteers, the former wishing to overthrow the *comité*, and which ceased as soon as it

was known by them that the *comité* had resigned their powers to the foreign consuls.

The reasons for the resignation of the *comité*, in my opinion, consisted in that about forty of our principal merchants having been shut up by them for twelve hours under the demand of \$100,000, which they stoutly refused, (and who were liberated at the request of the consuls,) thus leaving them without funds to pay their volunteers and troops; that their troops having become entirely disorganized, the close approach of the government troops and the fleet of foreign vessels having been increased by three British iron-clads, must have decided them to take that step.

During our temporary administration a military and civil governor as well as captain of the port were appointed, and all the naval officers liberated.

At 12 o'clock Admiral Lobo arrived at Cadiz, into whose hands the consular corps gave over the entire government of the city and retired; but before this Admiral Lobo addressed the foreign consuls in the most flattering terms, assuring them, in the name of the Spanish government, that the difficult commission they had for humanity sake taken charge of, was most highly appreciated, and that the city of Cadiz would never forget the great benefit received from them.

At about 2 o'clock p. m. the government troops, under the command of General Pavia, marched into the town without firing a shot; the volunteers were disarmed, and at present the city has recovered its former tranquillity, although commercial transactions are extremely dull, but which will improve as soon as it is seen that business can be transacted with safety.

General Pavia proceeds from this to Granada, where there exists another "comité of public safety," and after the pacification of that city and its province, the whole province of Andalusia will be under the control of the established government.

I am, &c.,

A. N. DUFFIE.

[Inclosure 1.—Translation.]

Proclamation of consular corps to the people of Cadiz.

Inhabitants of Cadiz:

The comité of salud publica has resigned its power into the hands of the foreign consular body of Cadiz. The consuls have not vacillated in accepting so difficult a commission on account of the affection they profess for so noble a people, trusting in the honesty and wisdom of all classes of the population in the towns, whose co-operation they solicit, so that order, tranquillity, and confidence be complete in Cadiz.

They all desire to be aided in this task by the battalions of volunteers, as they already are by the regular forces, so that order may be completely secured in Cadiz, without in the least wounding the just and patriotic susceptibility of the inhabitants of Cadiz, till the moment, near at hand, that the troops of the Spanish government commanded by General Pavia may receive from us the powers which legally belong to them.

The Commission,
P. BENEDETTE,
Consul of France.
T. READE,
English Consul.
E. KROPF,
Consul of Germany.
A. J. CHRISTOPHERSEN,
Consul of Sweden.
RAMON ALCON,
Italian Consul.
I. DAMASCO DE MORAES,
Consul of Portugal.

CADIZ, August 4, 1873.

No. 433.

Mr. Hancock to Mr. Davis.

No. 238.]

UNITED STATES CONSULATE,
Malaga, August 2, 1873. (Received August 26.)

SIR: On Friday, the 25th ultimo, a conflict occurred in the streets of this city, between the followers of Francisco Solier and Edward Carvajal, two contestants for local popularity and honors, in which eleven were killed and twenty-three wounded. Some eight or nine of the wounded have since died.

On Monday, the 28th ultimo, two insurgent iron-clad vessels, the *Victoria* and *Almanza*, left Carthagena under command of General Contreras, to depredate on the towns along the coast between that place and Malaga. Together they carried something near two thousand people, made up of the very worst class of the population. Rumor says that the prison-doors were opened and nearly a thousand criminals of every class composed a part of this motley crew. The first place they stopped was at Almeria, one of the dependencies of this consulate, about eighty miles east of this. Under the threat of bombardment they demanded from the people \$100,000 to be paid within an hour. Instead of raising the money (in fact it would have been impossible) the entire populace deserted the town, leaving a garrison of from eight hundred to a thousand volunteers, to prevent a landing of the followers of Contreras, if possible. At the end of the hour given some twenty shots were fired. Then, after a short respite, about twenty more were fired and the bombardment ceased. One or two houses were slightly damaged but no lives lost.

At eight o'clock on Tuesday evening they weighed anchor and put to sea without having received a farthing.

Their next anchoring was at Motril, some forty miles east of this, in this province; and there they demanded \$16,000, which was given in bills of exchange on Malaga.

Yesterday, Friday morning, the *Almanza* made her appearance in the distance off this harbor, when the English iron-clad *Swiftsure*, Captain Ward, and the German iron-clad *Prince Frederick Charles*, under the command of Commodore Werner, put to sea to prevent her coming in. The German iron-clad fired a shell across the bow of the *Almanza*, when her guns were loaded and run out and the deck cleared for action. Seeing the same preparations on the two other iron-clads, the insurgents changed their minds and lowered their flag and surrendered. General Contreras was ordered on board the German vessel and there made a prisoner. The three vessels then started for Carthagena, and about two hours afterward they overhauled the *Victoria* and took her also.

They go back to Carthagena with them, and it is reported that the German iron-clad will blockade the port to prevent their coming out again.

Immediately after the occurrence there was general rejoicing here that Malaga had been saved from the fury of these people; but a reaction is now taking place, and notwithstanding the action of the Madrid government in declaring these vessels pirates, a feeling of hostility is manifested at the interference of foreign nations. It is commonly said, as this is a contest between Spaniards, that foreign governments, so long as their subjects are allowed time to make their escape, have no business to take sides with either party in the absence of a recognition of the Madrid government.

Considering the interest of our commerce and the Americans who reside here, I am inclined to regard it a matter of congratulation that these vessels were taken by the vessels of other nations than our own. Communism must have its run here, and it will be the better, I think, that we have not interfered between the contending factions.

We are quiet for the present, but will not long remain so.

At Granada, the capital of this kingdom, the red republicans have absolute control, and have adopted rules and regulations for the government of the city, very like those of the Paris commune.

I have, &c.,

A. M. HANCOCK.

XXX.—SWEDEN AND NORWAY.

No. 434.

Mr. Andrews to Mr. Fish.

No. 187.]

LEGATION OF THE UNITED STATES,
Stockholm, April 15, 1873. (Received May 9.)

SIR: On the evening of the 11th instant I had the honor to receive your No. 128 of the 22d ultimo and inclosures relative to securing the co-operation of Sweden and Norway in procuring a modification of Cuban tariff laws; and on the day following I sent to the foreign office a note, of which the inclosed is a copy, together with one printed copy of your dispatch and accompanying memorandum of March 21, to the United States minister at Madrid.

Another copy of the last-mentioned document having been received with the next day's mail, I to-day handed it in person to the minister of foreign affairs, believing he would like to send it to Norway.

In course of our conversation he said there having been two (Easter) holidays, my note, just laid on his table, had not received his attention. I briefly stated what the practices were which we wished modified, and the remedy that was proposed. He replied that Swedish vessels had suffered many hardships from the ignorance of Spanish revenue officers, especially in their enforcing strict quarantine against such vessels, whenever there was cholera in St. Petersburg. In conclusion he said, "We will gladly do all we can to assist you in this matter."

I am, &c.,

C. C. ANDREWS.

[Inclosure.]

Mr. Andrews to General Bjornstjerna.

LEGATION OF THE UNITED STATES,
Stockholm, April 12, 1873.

SIR: In compliance with instructions from my Government, I have the honor herewith to hand you a printed copy of a* dispatch of March 21, 1873, and accompanying memorandum, from the Secretary of State of the United States to their representative at Madrid, wherein he is instructed to use his best endeavors to secure a change of the

*For inclosure see page 932.

tariff laws of Cuba, so that fines for errors in manifests may be imposed on *goods* instead of on *vessels*, and earnestly to request that your government will instruct its minister at Madrid to make a simultaneous if not identical application to the Spanish government in support of the desired change.

The unjust and burdensome nature of the system of tariff fines which obtains in Cuban ports is abundantly shown in the memorandum. Your excellency will notice that my Government long ago, but in vain, sought relief from the system. The fact that it is still continued seems to render it for the interest of all maritime powers, whose vessels are in the habit of trading to Cuban ports, to make a simultaneous and earnest effort to secure its prompt and just modification.

In the hope that you will lend your valuable influence for the accomplishment of this object, I beg to renew to you, sir, the assurances of my most distinguished consideration.

C. C. ANDREWS.

His Excellency General O. M. BJÖRNSTJERNA,
Minister of State and Foreign Affairs.

No. 435.

Mr. Andrews to Mr. Fish.

No. 191.]

LEGATION OF THE UNITED STATES,
Stockholm, May 21, 1873. (Received June 11.)

The coronation of Oscar II as King of Sweden, and the festivities attending it, are now over. The coronation took place because the King insisted upon it. The constitution does not require, nor did the people generally desire, it. (The constitution of Norway impliedly requires a coronation there.) It is an ancient religious ceremony, consisting of an imposing procession, of numerous prayers, of preaching and singing, of anointing the King by the archbishop on his forehead, temples, breast, and wrists; of the delivery to him of the emblems of authority by the prime minister, and archbishop, each, with nicety, having a hand on the emblem when the King takes it; and, finally, the administration of an oath to the King by the prime minister; a ceremony indeed consistent with what was once supposed to be the divine right of Kings. It seems to have been thought by His Majesty that the omission of this ceremony might at some possible future crisis afford a pretext for his enemies to question his title and authority among the superstitious. He wished to make assurance doubly sure. Another, though lesser consideration, was the obtaining the compliment to his court and country of distinguished embassies for the occasion. In this respect his anticipations have not been disappointed. Five countries sent special embassies, and two special envoys, with *attachés*. The senior ambassador, on account of his arriving first, was General Barail for France, chief of cavalry in Paris, accompanied by his wife. Italy sent the distinguished Ex-Prime Minister Menabrea; Germany, the renowned General Blumenthal; Russia, General Liewen; Austria, Prince Metternich, who, for ten years, was ambassador at Paris. Each ambassador had a suite of from three to five persons, including in two cases, Russia and Germany, officers of the rank of major-general. The *attachés* who received most attention in court society here were those most distinguished for aristocratic birth and wealth. Denmark and Holland only sent special envoys.

On Monday, the 12th instant, the day of the coronation, (which was very rainy,) the King and Queen gave a dinner to about six hundred Swedish and Norwegian guests, the latter consisting principally of the deputation sent from Norway; and the minister of foreign affairs the same

evening dined the embassies and diplomatic corps. Wednesday, from 12 to 2 o'clock, their Majesties received the homages of the court society, the foreign representatives and ladies being received last; and at 5 o'clock of the same day the King and Queen gave a dinner to the foreign representatives and ladies. Thursday evening the city gave a splendid ball in honor of the coronation, which was attended by the King and Queen and their four sons. On Friday, at 4½ p. m., the queen dowager gave a fine dinner to their majesties, the high Swedish officials, and the foreign representatives; in all, about three hundred guests. On Saturday evening the King gave a ball at the palace to about sixteen hundred guests. At the opening of the ball the Queen was conducted, by her request, in the *polonaise*, or promenade, by each of the ambassadors and chiefs of missions. The King severally conducted each of their ladies. The same compliments were extended to prominent Swedes. On Monday evening, the 19th, the Norwegian minister of state, Mr. Kieralf, gave a fine ball and supper to about five hundred guests. It affords me pleasure to state that at the three balls, where champagne and other wines were to be had as freely as water, I did not see a person, even after the supper, who was noticeably under the influence of drink.

The weather has been rainy during all the festivities. The ambassadors left yesterday.

I am, &c.,

C. C. ANDREWS.

No. 436.

Mr. Andrews to Mr. Fish.

No. 200.]

LEGATION OF THE UNITED STATES,
Stockholm, September 4, 1873. (Received September 26.)

SIR: In regard to the coronation of the King and Queen of Norway, at Trondhjem, on the 18th of July, I would state that the ceremonies were substantially the same as at Stockholm, with the exception of the oath taking, and passed off in a fine manner.

The city of Trondhjem, the old home of Norwegian rulers, has a population of twenty thousand; is compactly and well built, with regular, wide, well-paved streets, and ample sidewalks of smooth stone, and has picturesque surroundings.

I arrived there with my family on the 15th of July, and as the King and Queen were expected the same evening, the city was already wearing a holiday appearance, the main streets being thronged with well-dressed people, the principal dwellings and shops decorated with garlands, and great numbers of flags also being displayed from houses and the vessels.

Among the distinguished visitors to the coronation were Prince Alfred, of England, and Prince Waldemar, of Denmark—the latter a lad in common sailor's dress—severally escorted to Trondhjem by a squadron of war vessels. Russia and Denmark sent special envoys besides their regular diplomatic representatives. Germany sent a squadron under the command of an admiral; and last, but not least, were the deputations from the Norwegian Storting and the Swedish Riksdag, and from the cabinet councils of both states.

The presence of three thousand good-appearing Norwegian soldiers made the event more imposing.

Their Majesties gave a dinner to several hundred guests on the day of the coronation. On the following Sunday evening the city gave a grand ball and supper in honor of the event. A similar entertainment was given by the King the following Tuesday evening; and it was at the latter I first learned that the King had just conferred the new office of minister of state and president of the Norwegian cabinet, with title of excellency, on Mr. Frederick Stang, who for a long time has been at the head of the cabinet, with the title of councillor of state.

Another series of festivities, in honor of the occasion, took place in Christiania during the first week in August, and what was most noticeable with regard to them was the presence of the Prince Imperial of the German Empire.

Considering the avowed sympathy of Norwegians and Swedes for the French in the late war, it is the more to be remarked that this visit of Prince Frederick at Christiania, and subsequently at Stockholm, has left a quite favorable impression both in Norway and in Sweden.

Some American citizens, travelers, were present at the coronation, and I was authorized, in case they had remained in the city, to have them attend the King's ball.

Previous to the coronation His Majesty made an extensive tour to the extreme north part of Norway. Leaving Stockholm in June, he proceeded up the Baltic to Hudiksvall; thence across Sweden, via Östersund to Levanger, where he embarked on a steam-frigate and went to the North Cape, touching at Strömsö and other points. He met with cordial receptions. Many of his short speeches on the occasions were published, and were much commended for their good taste. Considering how extensively Norwegians are engaged in all branches of the fisheries, it was a somewhat happy incident that His Majesty's vessel during the trip captured a whale.

As many Americans are now in the habit every summer of traveling in Norway to view the scenery, it may perhaps be useful if I put down a few facts as to the experience of myself and family in our late trip.

We went from here to Sundsvall, on the east coast of Sweden, by steamer; thence by carriage—a four-seated landau, lighter than the ordinary Swedish, and procured here for the purpose—via Östersund and Levanger, Norway, to Trondhjem; thence south by rail, a couple of hours, to Stören, and by carriage over the Dovre Mountains, 126 English miles; thence through Lesje and Romsdal to Veblangsnaess, 74 miles; thence by steamer to Molde; thence by steamer to Bergen, occupying twenty-four hours; thence by steamer, half a day, to Bolstadören; thence by carriage and row-boat, via Vossvangen, to Gadvaugen, 50 miles; thence by steamer, through Nersfjord, nine hours, to Laerdal; thence by carriage over the Fille range, through the Valdres, to Randsfjord, 126 miles; thence by steamer to Hadelund's Glass-Works, five hours; thence by carriage, via Hønefoss and Ringe Rike, to Christiania, 42 miles; thence by rail to Stockholm.

This route afforded a view of a part, but only a part, of the fine scenery of Norway. The highest mountains of Norway are said to be 8,000 feet high, but even those which are not so high are partly covered with snow. Soon after leaving Östersund, in the middle of Sweden, one begins to see mountains covered partly with great patches of snow. Probably the best view from the road of distant, lofty snow-covered peaks, was had in crossing the Dovre range. What seems most impressive about the scenery is the steepness of the mountain-sides, their apparent closeness

to the traveler as he passes along the road, and the numerous wonderful cascades which drop in silvery sprays from their rocky summits; to which may be added, the effect of the rivers, which, either as beautiful rapids or roaring torrents, are generally closely followed by the roads. The most striking scenery of this sort is in the Remsdal, the Nersdal, and the Laerdal. The prevailing scenery is, however, by no means of a sterile or very wild character; on the contrary, while the lower slopes of most of the mountains are cultivated, and their sides, even to their tops, fairly covered with spruce or pine, there is also a great deal of pasturage, and one sees flocks of cattle, sheep, or goats at very high points. On most of the shores of the fiords and lakes cultivated fields, carefully fenced, extend from a quarter of a mile to two English miles up the slopes, though sometimes there is only room for quaint little triangular patches. In many places the extensive view of cultivated fields on lake shores is delightful. Of course there are many localities with extensive areas of arable soil.

The roads were everywhere excellent, being in many places cut out of solid rock, and nowhere so steep but the carriage could safely descend with the aid of a drag to one wheel, though we frequently found it prudent to walk both down and up hills.

The system of travel requires a few words of explanation, the charges being in some cases constructive. On all the public roads of Norway—and it is the same in Sweden—there are “stations” with hotel accommodations at an average distance from each other of ten English miles, and, as a general rule, the rooms and beds are tidy, the food consisting of fresh mutton, salmon trout, wheat or rye bread, eggs, milk, butter, coffee, the latter invariably being unadulterated and well prepared. The cluttered farm-yard surroundings of the stations, however, lessen their attractiveness as summer-resorts. The station-master is required to furnish the traveler with horses, and, if he should want it, a “carriole” or gig, or even a cart for baggage. If the station-master has not horses enough on hand, he sends out to the neighboring peasant-farmers, who are required to furnish one or more according to their supply. If the traveler has previously sent a written notice to the station at least three hours before the time the horse or horses are wanted, they must be ready at that time. If he has not sent notice he is liable to wait for them two hours, or even more. If a traveler takes a gig, he drives himself, and the boy who is to return with the horse from the next station sits behind. The carriages or gigs usually furnished at stations are without springs and very jolty. If the traveler has his own carriage, it is necessary also to have his own harness. With a covered carriage with three grown persons and one hundred pounds of baggage, drawn by two horses, the carriage belonging to the traveler, the station-master has the right to charge for *four* horses. The charges vary according as to whether the station is in or near the city, or in the country. In the country the charge is one and a half marks, 33 cents United States gold, per horse for a Norwegian mile, which is equal to $6\frac{3}{4}$ English miles.

With a two-horse carriage, as above mentioned, the charge would be for *four* horses, viz, \$1 32 for one Norwegian mile. A small sum is also expected to be paid to the driver. Drivers and horses are changed at each station. It is said the *peasantry complain* that this system of travel is burdensome on them. It is apparent that in some respects it is a convenience to travelers, yet it is not without many annoyances. If one travels in a gig, driving himself, he can regulate somewhat his speed, but otherwise the speed is dependent on the whim of the driver fur-

nished by the station, and therefore varies much even where the roads are similar. It may happen, therefore, that if horses have been previously ordered, the traveler may find himself so delayed by a couple of stages unexpectedly slow driving as to lose his chance for the ordered horses, as they are not required to be kept for him over two and a half hours; and their detention is also to be paid for. The horses are merely large-sized ponies. It is not uncommon that the station-master or driver extorts illegal fees; or that the traveler is kept waiting an unreasonably long time for horses, with a view to the extortion of some additional sum or compel the procurement of lodgings or refreshments. With the best management one can seldom make over fifty English miles in a day, starting at six in the morning. Travelers complain that on alighting at a station they find half a dozen or more people standing about with an air of indifference, and that no authorized person comes forward to inquire their wants and assist them in getting a fresh start.

There are European cities whose rich collections of art are a constant attraction to tourists, causing a flow of money that would not otherwise come. So the mountain scenery of Norway is a mine of wealth to that country, and, with some improvements in the system of travel, probably a thousand tourists might each summer be attracted where now are but a few hundred. If it were my province I would suggest that the law as to fees, and the rights and obligations both of travelers and station-masters, be printed in the English, German, and French languages, as well as the Norwegian, and a copy in each language be kept at each station; that the time required to travel each way between stations be prescribed, and printed in schedule form, and that through inspectors or otherwise the laws in respect to travel and stations be more rigidly enforced. At the present time the station-masters have everything too much in their own way, and are too much tempted to practice imposition on foreigners unacquainted with their language, greatly to the injury of the honest Norwegian character.

For a general notice of Norway it may be said that its climate, owing to the Gulf stream, is mild. The mean temperature at Christiania is 42° Fahr.; at Bergen, where there is much rain, $46^{\circ} 7'$; at Trondbjem 40° . The harbors of the two last-mentioned cities, as well as of Molde, do not freeze in the winter. At the latter place, which is in latitude of about 63° , and where there are some beautiful villas of Christiansund merchants, I noticed some larch-trees that were two feet in diameter; also an European oak of large size. English cherries were ripening there in the latter part of July, and numerous thrifty apples-trees were loaded with fruit the size of English walnuts. The crops of rye, barley, oats, potatoes, and hay were in good condition.

The population of Norway is almost a million and a half. It is the healthiest country in Europe, its rate of mortality being only 18 per year per thousand inhabitants. In 1865 there was one-third of an acre of cultivated land in proportion to each inhabitant; but there remain great tracts which by drainage and clearing can be reclaimed to agriculture, and the dairy industry especially is capable of extensive development as savings and capital shall increase. There are 131,780 farms cultivated by their owners, and over 15,000 farms cultivated by tenants. The annual value of field-crops, exclusive of the hay-crop, which is the largest, is 16,000,000 specie dollars—a specie dollar being equal to \$1.06 United States gold. The value of the fisheries is 14,000,000 of specie a year. The value of imports into Norway is 26,000,000 of specie annually, and of exports 20,000,000 of specie. Considerable American pork, cotton, tobacco, and mineral-oil are imported in Norway, though the trade for the most part is indirect. I would remark here that as apples are worth \$7 a barrel at

Bergen, it would seem that the experiment should be tried of importing apples from the United States by means of the new line of steamers between New York and Bergen. The commercial marine of Norway is over 1,000,000 tons, consisting of 7,000 vessels and 50,000 seamen, giving her rank in this industry as the third state in Europe and next after France. She has 5,000 miles of telegraph-lines, and upward of 400 (English) miles of railway. Additional railways are in progress, and will be completed in course of three or four years, viz, the road between Trondhjem and the Swedish boundary, to connect with Sundsvall; between Christiania and Trondhjem; and between Christiania and Fredrickshold. A German company has lately failed in obtaining concessions and guarantees from the government for a railway over the mountains connecting Bergen with Christiania.

The number of horses in Norway in 1865 was 144,900; of horned cattle, 945,600; of sheep and goats, 1,992,400; of swine, 91,900; of reindeers, 101,800.

The public revenue for the last fiscal year, 1872, was 7,325,000 specie dollars. The expenses were 5,520,000 specie dollars. The receipts exceeded the estimates by 480,000 specie dollars.

The public debt, principally contracted for railways which the state owns, is eight and a half million specie dollars, interest for a part at 4 and for the balance $4\frac{1}{2}$ per cent. The bonds were originally disposed of at $97\frac{1}{2}$ per cent., and are now worth 99 per cent.

The amount annually paid for public schools, derived principally from local taxation, is about 1,000,000 specie dollars. Something over that sum is annually spent for the army. The amount appropriated for the royal family is 130,000 specie dollars a year.

Christiania, the capital, is a pretty and rapidly growing city of seventy thousand inhabitants.

While there I visited, in company with the United States consul, Mr. Gode, one of the common public schools. The building was new, finely situated, spacious, and well furnished, and the children, belonging to the industrial classes, were without exception tidily dressed and exceedingly well appearing. I also visited the cell-prison, which, in size and appearance, much resembles the new jail in Boston.

Bergen is a city of forty thousand inhabitants, and constantly increasing in commercial importance. As I hope soon to be able to furnish the Department with further facts in regard to Norway, in a report which I expect to prepare on the condition of the industrial classes, I will merely remark in concluding that the country appears to be fully awake to modern ideas of culture and progress.

I have, &c.,

C. C. ANDREWS.

XXXI.—SWITZERLAND.

No. 437.

Mr. Rublee to Mr. Fish.

No. 111.]

LEGATION OF THE UNITED STATES,
Berne, November 30, 1872. (Received Dec. 30.)

SIR: The Catholic question continues largely to occupy public attention in Switzerland.

In my No. 107, of October 5, I gave some account of the conflict which had arisen between the government of the canton of Geneva and the

hierarchy of the Catholic Church. Since that time the situation has remained substantially unchanged. The government adheres to its refusal to recognize M. Mermillod either as bishop or curé of Geneva. M. Mermillod continues, in fact, to exercise the functions of bishop, and is recognized as such by the Church. The moderate salary which he formerly received from the public treasury as curé is withheld, but generous contributions and offers of aid from devoted admirers in France relieve him from all solicitude in regard to financial support. Some 20,000 francs were promptly collected at the bureau of the principal Catholic journal in Paris, and forwarded to him with the assurance that further sums would be forthcoming when required.

One of the first results of the conflict was the introduction in the grand council of the canton of a bill providing for the complete separation of church and state. This, however, after a protracted discussion, was rejected by a decided majority. The *conseil d'état* thereupon announced that it would shortly propose a measure providing for the election of curés by the congregations of the several parishes, to hold their offices for a specific term. Such laws have already existed for many years in a number of the cantons, including some of the Catholic cantons.

On the 10th instant elections were held for members of the grand council of Geneva. This body appoints the members of the *conseil d'état* and upon the result of these elections depended the character of the cantonal government for the ensuing three years. The struggle turned altogether upon the question of sustaining the government in the attitude it had taken in the Mermillod affair. The party favorable to the government achieved a signal triumph. Its candidates received nearly four-fifths of the votes cast. It may be fairly presumed, however, that many of the opposite party, seeing no prospect of success, abstained from voting. The vote, however, was one of the largest ever cast in the canton; nevertheless, the number of votes polled was only about two-thirds of the number of voters inscribed on the registry list.

A controversy of greater significance, in some respects, has since occurred between the government of the canton of Soleure and the functionaries of the Church. It is not, as in Geneva, a controversy between the civil authorities of a Protestant canton and the Catholic Church. In Soleure a difference has arisen between the functionaries of the Church themselves, and the government of a distinctively Catholic canton gives an energetic support to the opponents of the dogma of infallibility with the apparent approval of a large majority of the people.

The canton of Soleure is comprised within the bishopric of Basle, the residence of the bishop being in the city of Soleure. Toward the close of the month of October last the bishop, Monseigneur Lachat, suspended one M. Geschwind, the curé of the commune of Starrkirch, from the exercise of ecclesiastical functions, upon the ground that the said curé had refused to accept the dogma of infallibility, and in the press as well as from the pulpit had taught doctrines inconsistent with those of the Church; at the same time the bishop proclaimed the excommunication pronounced by the council of the Vatican against those who deny the infallibility of the Pope in force against M. Geschwind *in foro externo ecclesiastico*, as it had been long since *in foro conscientie*. The congregation of Starrkirch at once indicated the purpose of sustaining their pastor against the bishop. The *conseil d'état* of the canton, apprised of the action of the bishop, addressed him a note on the 1st instant, informing him that his attempt to remove the curé without consulting and without the concurrence of the civil authorities was regarded as illegal and an abuse, and that they should sustain the curé under

the circumstances by all the means at their command. They reminded the bishop that if there was good ground for proceeding against M. Geschwind his proper course was to present specific charges against him. At the same time the *conseil d'état* notified the commune of Starrkirch that it was expected that the curé would remain at his post and perform his duties. A Capuchin monk, who had been sent by the bishop to officiate in the church of Starrkirch on Sunday, the 3d instant, was dismissed by the president of the commune, and M. Geschwind continued to act as curé. On the same day the people manifested their satisfaction with the course of events by erecting a tree of liberty before the church, while the parochial council held a meeting, and, by an unanimous vote, adopted resolutions approving of the manner in which the curé had discharged his duties both within and without the church, declaring that they absolutely declined to receive another curé, and that if he were in any manner disquieted in the exercise of his office they would invoke the protection of the government.

The bishop replied to the note of the *conseil d'état*, denying the right of the government to interfere in his relations with the clergy of his diocese. The following day the *conseil d'état* adopted, with unanimity, a resolution that the revocation of M. Geschwind was illegal and based solely upon the circumstance that he held and had taught the Catholic faith as it was recognized and professed up to the year 1870; that it was the duty of the state to protect its citizens against injustice; and that the commune and the curé of Starrkirch should be notified that the said curé was recognized by the government as the only legitimate curé of the parish, and would continue to be so recognized as long as neither the parish nor the collator presented any formal complaint against him, and until he had been removed with the participation of the government itself. Subsequently this action of the *conseil d'état* was approved by the grand council of the canton, after a full discussion, by a vote of 79 to 21.

In the mean time public sentiment found expression through various municipal and other meetings. The communal council of the city of Soleure on the 16th of November, after three and a half hours of discussion, adopted by a vote of 18 to 4 resolutions affirming that the doctrine of papal infallibility is in contravention to the authority of the democratic state; that it jeopardizes religious peace, which is a social necessity for Switzerland; that it is without binding force upon the members of the church, and that it shall not be permitted to be taught either in the schools or churches of the city of Soleure. Copies of these resolutions were directed to be forwarded to the cantonal government, to each of the communes of the canton, and to the bishop; and an official meeting of the electors of the school district comprising the city of Soleure was called for the 24th instant to pass upon the resolutions thus adopted. At the latter meeting a large majority of the voters approved the resolutions, the minority abstaining from participating in the proceedings.

On the 17th instant a meeting of the commune of the city of Olten was held, Olten being the second town of the canton in importance, and resolutions submitted to the voters by the communal council of the city were unanimously adopted to the following effect:

1. Public and solemn protest against the dogma of papal infallibility.

2. Communication of this protest to the bishop of Basle and to the government, with an earnest request to the latter for the adoption of

energetic measures to prevent the teaching of said dogma in the churches and the schools.

3. Declaration of earnest sympathy with the commune of Starrkirch in its firm attitude respecting the conflict between the bishop and its pastor.

On the 19th instant the diocesan conference of the bishopric was held at Soleure. Of the seven cantons composing the diocese, Soleure, Berne, Basle, Argovie, and Thurgovie were represented. Lucerne and Zug withheld from the meeting. The conference adopted an elaborate preamble and resolutions in condemnation of the course pursued by the bishop. It declared that in promulgating the dogma of infallibility contrary to the decision of the diocesan conference of August 18, 1870, and in illegally attempting to remove the curé of Starrkirch, the bishop had placed himself in flagrant contradiction with the oath he had taken when he swore obedience and fidelity to the governments composing the diocese of Basle, and to conclude no arrangements and to take no part either within or without Switzerland in any affair of a nature to menace the public tranquillity. The conference further pronounced that the dogma of infallibility is not recognized and has no legal force; that the bishop is prohibited from inflicting censures upon priests whose only offense is in opposition to that dogma; that the bishop can only remove curés with the participation of the cantonal authorities, and finally that the bishop is summoned to withdraw unconditionally, within fourteen days after his reception of the proceedings of the diocesan conference, the excommunication promulgated by him against the Curés Egli and Geschwind. The Curé Egli is a curé of the canton of Lucerne, who was excommunicated a year or more since for refusing to accept the dogma of infallibility.

The conference adjourned to meet at the expiration of the period given the bishop for withdrawing the excommunications launched against the curés, in order to take further action at that time if it should be deemed necessary. In the mean time all the states of the diocese will be urged to participate in the adjourned meeting.

The action of the conference has been approved by the governments of the five cantons that were represented in it. During the past week the nuncio of the Pope accredited to the Swiss Confederation has had an interview with the President, and is reported to have entered an earnest protest against the position taken by the government of Soleure and the action of the diocesan conference.

One of the immediate results of the agitation is the enactment of a law by the canton of Soleure providing that the office of curé shall henceforth be elective for a fixed term, and that the curés shall be chosen by a vote of the electors of their respective parishes.

On to-morrow a meeting of delegates representing the several old Catholic societies of Switzerland will be held at Olten to form a more effective organization. At the same time a popular meeting is called, in which all sympathizing with the movement are invited to participate, and addresses are to be given by prominent old Catholics, both from Germany and Switzerland.

At a time when the Catholic question holds so prominent a place in European politics, I have thought this brief narration of the recent occurrences in the canton of Soleure might not be without interest. In general, where dissent has been manifested in the Church with the new dogma, that sentiment has hardly assumed the dimension of a popular movement. It has been confined to the few, to persons of a certain degree of intellectual culture and training, or to those who, if nominally classed as

Catholics, are without very definite religious convictions, while the great majority have accepted the proclamation of infallibility with prompt and unquestioning faith. In the canton of Soleure there is clearly disclosed, however, the existence of a serious and widely prevailing dissent among the masses of a Catholic population.

I am, &c.,

HORACE RUBLEE.

No. 438.

Mr. Rublee to Mr. Fish.

No. 122.]

LEGATION OF THE UNITED STATES,

Berne, February 4, 1873. (Received February 28.)

SIR: The agitation produced by the dissensions in the Catholic Church in Switzerland and by the jealousy which is felt on the part of the Protestant and a portion of the Catholic population respecting the designs of the ultramontane party goes on increasing, and is assuming such dimensions as seriously to threaten the public peace.

The infallibilist clergy resolutely maintain their pretensions, and their opponents as resolutely resist them. The solution of the controversy offered by a separation of church and state meets with but little favor in any quarter. It is rather losing than gaining ground. Both parties prefer to fight out the battle as at present engaged, neither caring to forfeit, in case of victory, the advantages which it expects to reap from continuing the connection.

In a former dispatch, No. 111, November 30, 1872, I have given an account of the differences which had arisen between the government of the canton of Soleure and the bishop of Basle, growing out of the promulgation by the latter of the dogma of papal infallibility, contrary to the resolutions adopted at a meeting of the diocesan conference in August, 1870, and of his action in deposing and excommunicating the curé of a certain parish who refused to accept and to teach the dogma in question without consulting and without the concurrence of the civil authorities. I also related the action of the diocesan conference which was held on the 19th of November last, in which five of the seven cantons composing the diocese of Basle were represented. The conference summoned the bishop to withdraw unconditionally, within fourteen days after his reception of the proceedings of the conference, the excommunication he had promulgated, and adjourned to meet at the expiration of that period. The bishop refused to obey the summons of the conference. The conference, however, did not assemble again until the 28th ultimo. On that occasion all the cantons of the diocese were represented. After a session of two days, by a vote of five of the cantons—Soleure, Berne, Basle, Campagne, Argovie and Thurgovie—against two, Lucerne and Zug, the conference adopted resolutions to the following effect:

That the authorization given on the 30th of October, 1863, to the Bishop Eugene Lachat de Mervelier to occupy the episcopal seat of the diocese of Basle is withdrawn and the bishopric declared vacant; that M. Lachat is prohibited from exercising ecclesiastical functions, and that the cantons are invited to withhold the episcopal revenues until further notice, and to sequester those revenues where the diocesan funds

are not confounded with those of the state ; that the government of the canton of Soleure be invited to fix a time within which M. Lachat shall quit the official residence in the episcopal palace, and to make an inventory of all property belonging to the bishopric ; that the chapter, in accordance with the convention of 1828, establishing the diocese, be invited to name, within fourteen days, an administrator *ad interim* of the diocese who is acceptable to the government of the cantons. That the five diocesan governments joining in these resolutions invite the cantons of Zurich, Basle-ville, Schaffhausen, Tessin, and Geneva to take part in behalf of their Catholic population in the negotiations which will be immediately opened for the revision of the diocesan convention ; that these resolutions be communicated to the Federal Council for its information, and for diplomatic transmission to the Holy See ; and that the conference will again assemble on the 14th of February, to take cognizance of the action of the chapter and to adopt ulterior measures. The majority of the conference at the same time prepared and have since caused to be published an address to the public, setting forth in detail the reasons by which they were governed in adopting these resolutions. In this address they charge the bishop with disregarding the interests and institutions of the cantons which assented to his election, and with disturbing the public tranquillity in order to promote the triumph of a dogma which is directed against the organization of the modern state, which is at war with the principles of the constitution of Switzerland, and which threatens to involve the people in religious strife. They allege that he has sought to suppress all independence of thought and of character on the part of the clergy, and quote from a letter addressed by the bishop to the government of Soleure, in which he declares that the clergy are responsible only to God and himself ; that he has violated the diocesan convention by establishing a special seminary without the consent of the cantonal governments ; by neglecting upon the most important questions to consult with his constituted spiritual advisers ; by refusing to recognize the right of *placet* of the diocesan states ; and, finally, by disregarding the oath of fidelity and obedience toward the cantonal governments which he took upon the Holy Scriptures. It further accuses the bishop of "manifesting a lack of that dignity which should characterize his position, by interfering in the political affairs of the cantons by means of pastoral letters and other official writings, going even so far as to take under his protection the press of a political party, furnishing inspiration to certain journals, while designating others, in a not very Christian fashion, as 'detestable.'"

In this last charge I suppose allusion is made to a rather extraordinary circular letter, signed by all the Catholic bishops of Switzerland, and published some weeks ago, wherein the members of the Church were earnestly warned against all newspapers except such as are devoted to the interests of the Church and the views of the Holy See, and urgently admonished, with comminatory references to the future, against extending any aid or countenance to the unorthodox press, either by subscription or advertising, and not to allow unorthodox journals to be received gratis in their homes.

The representatives of Lucerne and Zug cantons, with an almost exclusively Catholic population, not only refused to support but warmly protested against the resolutions adopted by the conference. They declared that, whatever might be the action of the other cantons of the diocese, the cantons of Lucerne and Zug will continue to recognize M. Lachat as their bishop. It is also reported that the latter will persist in maintaining his title and functions as bishop of the diocese, and

that he has already secured a commodious villa near Soleure, which he proposes to occupy when dispossessed of the episcopal palace.

The following table, which I compile from the census of 1870, shows the number of the different confessions in the diocese:

Cantons.	Catholics.	Protestants.	Jews.
Berne	66, 015	436, 304	2, 746
Lucerne	128, 338	3, 823	79
Zug	20, 082	878	17
Soleure	62, 072	12, 448	101
Basle Campagne	10, 248	43, 523	228
Argovie	89, 180	107, 703	449
Thurgovie	23, 454	69, 231	531
Total	399, 389	673, 910	4, 151

Thus in the diocese only a little more than one-third of the people are Catholic, while in the five cantons which unite in deposing the bishop the Catholic element comprises but a little more than one-fourth of the population. Soleure is the only Catholic canton that pronounces against the bishop.

It is probable that the chapter will refuse to appoint an administrator *ad interim* of the bishopric, and that the diocesan conference, on the re-assembling upon the 14th instant, will have next to proceed against the chapter.

In the mean while the grand council of Geneva is engaged in discussing a proposed law, prepared by the council of state, regulating the organization of the Catholic Church in that canton, and providing for the election for a definite term of office of the curés by the people of their respective parishes. A minority of the committee to which this bill was referred has reported a substitute providing for the entire separation of church and state as the easiest solution of existing difficulties.

While these propositions are pending it is suddenly announced that the Pope, by a pontifical letter dated 16th of January last, has appointed M. Mermillod, bishop of Hebron, *in partibus infidelium* to the functions of apostolic vicar of Geneva. On the 2d instant (Sunday) M. Agnozzi, the papal chargé d'affaires, waited upon the president of the confederation and notified him of this appointment. On the same day, M. Mermillod caused to be read in all the Catholic churches of Geneva a circular letter in which he had embodied the papal brief. No previous notice had been given to the government of the canton of this appointment, nor was any regard paid to the existing law which forbids the publication or putting in execution within the canton of any bull, letter, rescript, or decree of the court of Rome without the previous authorization of the government.

This action of the Holy See has added new fuel to the existing excitement. As soon as the appointment of M. Mermillod became known the council of state held a meeting, at which it is reported that it was decided, before taking any definite action, to consult with the federal authorities, since, in the judgment of the council, the dismemberment of the diocese of Lausanne, of which Geneva constitutes a part, by a papal brief, without a previous understanding with the civil authorities, involves international questions which call for the action of the federal government.

Nor are the manifestations of resistance to actual or apprehended encroachments of the Roman clergy confined to the German and French cantons. On the other side of the Alps, in the Italian canton of Tessin, which is still attached to the bishopric of Milan, and which, according

to the last census, has a population of 119,349 Catholics to 234 of all other denominations, the grand council has recently enacted a new criminal code which goes into effect on the 1st of May next. Among the articles of this code is one adopted by a vote of 51 to 23, providing that violations of the governmental right of *placet*, relative to the acceptance and exercise of ecclesiastical functions, as well as for the publication and putting into execution prescriptions in regard to worship, will be punished by fine and the suspension of the offending functionary from all public ecclesiastical functions. The new code further provides for the punishment of encroachments by the clergy upon the civil and administrative jurisdiction effected by the menace of ecclesiastical penalties, and for the punishment of priests who disturb the peace of families or the public tranquillity, or who employ in the churches language calculated to excite contempt for the legal institutions of the country, hostility to those institutions, émeutes, and rebellion. Such enactments of course indicate the existence, whether well founded or not, in an almost exclusively Catholic community of wide spread and serious distrust of the policy and aims of those who at present exercise a controlling influence over the Catholic priesthood.

In the German cantons meetings have been held in many Catholic parishes during the present winter, at which the congregations have discussed and formally adopted resolutions declaring their non-adhesion to the dogma of infallibility and their determination to adhere to the Catholic faith as it was received from their fathers.

It is difficult to forecast any satisfactory issue for the controversies engaged in at Geneva and in the diocese of Basle. Although a large number of Catholics are in sympathy with the civil authorities, there is little reason to doubt that MM. Mermillod and Lachat will have the support of a majority of their denomination. They are assured of the countenance of the Holy See and of the aid and sympathy of the great body of Catholics outside of Switzerland. The state will hardly venture upon more radical measures than the refusal to recognize them and the subordinate clergy who adhere to them, and the suspension of the salaries hitherto paid by the state. They will not, however, suffer from want. The cry of persecution will be raised, the imperiled interests of the Church will be portrayed, and private zeal will promptly supply, doubly and trebly if need be, the pecuniary stipend withheld by the civil authorities. The bishops, though not recognized by the government, will be recognized by their flocks. They and the priests who act under their orders may be excluded in some instances from the churches and liberal Catholic ecclesiastics officiate in their places, but such exclusion is likely to produce no other effect than to increase their influence by consecrating them in the eyes of the Catholic masses as sufferers for the faith. With them are the elements of enthusiasm and unquestioning belief, the best material for religious warfare; expecting miracles, obedient, confiding, long-suffering, accepting calamity as a wholesome discipline divinely provided for the just. The Liberals, on the other hand, are more intellectual, critical, but less earnest; their leaders, in fact, being, for the most part, rather Catholics by birth and classification than through serious religious conviction.

One circumstance tends strongly, however, to aid the Liberal Catholic movement in Switzerland and to give it a success which it would not otherwise attain. This is, in addition to the general diffusion of education and the habit, as republicans, of thinking and discussing for themselves upon public affairs, the fact that the war of the Sonderbund in 1847 grew out of an attempt of the Catholic cantons to divide the

country and establish a separate confederation. The animosities of that struggle still survive in the politics of the country. Many of the men now in public life bore arms upon one or the other side, and the impression is widely diffused that the Catholic Church, as an organization, is hostile to the confederation. Thus it happens that the sentiment of patriotism, proverbially strong in the Swiss, comes in to color and influence, to some extent, the controversies with the Church, and that the latter, whether justly or not, suffers under the disadvantage of being associated in many minds with an attack upon the integrity of the republic.

I am, &c.,

HORACE RUBLEE.

No. 439.

Mr. Rublee to Mr. Fish.

No. 123.]

LEGATION OF THE UNITED STATES,
Berne, February 18, 1873. (Received March 15.)

SIR : The conflict between the government of the canton of Geneva and the recently appointed apostolic vicar, M. Mermillod, has entered upon a new phase.

The Federal Council, after consultation with a deputation from the council of state of Geneva, decided to intervene in the controversy, and on yesterday M. Mermillod was expelled from the territory of Switzerland.

I subjoin a *résumé* of the action of the government in the affair.

On the 11th instant the Federal Council addressed a note to Mgr. Agnozzi, the papal chargé d'affaires, stating that the papal brief of the 16th of January, appointing M. Mermillod apostolic vicar of Geneva, which Mgr. Agnozzi had communicated to the President on the 3d instant, had been laid before them. The note proceeds to state that the government authorities of Switzerland have always asserted the principle that questions relating to diocesan organization can only be settled with their assent. This principle is asserted by the public law of Switzerland, both ancient and modern, and is supported by numerous precedents.

The Congress of Vienna in 1815 expressly recognized the right of the Helvetic Diet to decide respecting the continuance or the abolition of Swiss dioceses. The Holy See itself has recognized this principle by recently entering into negotiations with the Federal Council relative to the organization of the Catholic Church in the canton of Tessin. The negotiations which took place during the latter part of the year 1872 between the federal political department and Mgr. Agnozzi on the subject of the organization of Catholic worship in the canton of Geneva, proceeded upon the same principle. These negotiations were not broken off, so far as the Federal Council was concerned, until the Holy See issued the brief of the 16th ultimo. That document has changed the condition which the Catholic Church in Geneva had maintained for more than fifty years, and this without any consultation with the government. It now becomes the duty of the Federal Council to assert with energy the rights of the state. All modifications in the organization of a Swiss diocese, attempted by the mere volition of the Holy See, are and will be treated as null and void. The Federal Council deny the right of the ecclesiasti-

cal power to separate the Catholics of Geneva from the diocese to which they legally belong, and request Mgr. Agnozzi to inform the Holy See that the confederation will only recognize, in the future, as in the past, the diocese of Lausanne and Geneva; that it denies all official character to the apostolic vicar appointed by the brief of January 16; and that it will oppose the exercise by him of the functions which have been conferred upon him by the Holy See, illegally, without the previous assent of the political authorities.

On the same day the Federal Council transmitted a copy of this note to the government of Geneva, accompanying it with a letter stating that they had seen with satisfaction that the purpose of the government of Geneva, like their own, was to oppose energetically the encroachments of the Holy See, and requesting the Genevese authorities to give official notice to the titular nominated by the Holy See to the apostolic vicarate of the note addressed by the Federal Council to the papal chargé d'affaires, and to invite him, within a specified period, to signify to the government of Geneva whether, in the face of the opposition raised by the federal and cantonal authorities against the dismemberment of the diocese of Lausanne and Geneva, he intended to continue to exercise the functions of apostolic vicar. In case of an affirmative response, or of his failing to give a categorical answer, the letter declared that the Federal Council, acting in virtue of the authority given it by clauses 8 and 10 of article 90 of the federal constitution, would take, in union with the council of state of Geneva, suitable measures to prevent a representative of the Holy See from carrying out a mission which was contrary to the will of the authorities of the country and to the state of things legally established.

The notice was promptly served upon M. Mermillod. He was allowed until noon on Saturday, the 15th instant, to prepare his answer. At the appointed time he forwarded a long letter to the council of state, which was at once transmitted to the Federal Council. In it he asserts that the Holy See adopted the course of appointing him to fill the office of apostolic vicar at Geneva, because the Church has no longer any spiritual head there, (a situation, I should here mention, which was prepared by the resignation, a few months since, by the bishop of Lausanne and Geneva, of his functions, so far as the canton of Geneva is concerned;) that the creation of an apostolic vicariate is in nowise identical with the erection of an episcopal see; that the measure is provisional and temporary in its nature; that by it nothing is attempted against the rights of the state; that the authority of the apostolic vicar is purely spiritual, he is only a missionary of the Church, asking neither favor, privilege, nor compensation from the state; that the only practical solution of the problem presented by the relations between the Church and the state lies in a sincere and complete liberty assured to the Church, a pacific agreement in the nature of a concordat or oppression. In conclusion, he declares that he cannot abandon his purely spiritual functions without betraying the evangelical mission and the holy apostolate with which he had been invested by the head of the Church.

Upon the receipt of this response, the Federal Council, on the 17th instant, issued a decree which, after reciting the circumstances, prohibits the sojourn of M. Mermillod within the territory of Switzerland until he shall "expressly renounce the functions conferred upon him by the Holy See contrary to the decisions of the federal and cantonal authorities," this prohibition to cease from the day that he may renounce the aforesaid functions.

The council of state of Geneva was charged with the execution of

this decree. By its direction a commissary of the police, on yesterday, waited upon M. Mermillod and conveyed him in a carriage to the French frontier. No popular demonstration of any kind occurred, the city remaining perfectly tranquil. For the present the exiled ecclesiastic has taken up his abode with the curé of Fernex.

It is reported that M. Mermillod declared that he would only yield to force, and requested the commissary of police to lay his hands upon him in token that force was employed. The commissary, however, insisted that it was sufficient to exhibit his official mandate, and M. Mermillod consented to this compromise. He declined to intimate the point of the frontier to which he preferred to be conveyed, but at once accepted the proposition to be taken in the direction of Fernex, asking only to make some slight preparations for his journey and to write a protest addressed to the council of state. This was conceded. The protest is already published. In it M. Mermillod, after recounting his several titles of bishop and apostolic vicar, protests, in the name of the rights of the Catholic Church and the liberty of Catholic consciences, violated in his person, and in the name of his rights as a free citizen of the Helvetic Republic, against the decree of banishment issued against him, without his being heard in person, without any judgment, and without any violation of the laws on his part. He further declares that he remains the apostolic vicar of Geneva and spiritual chief of the Catholic Church of the canton. He gives his blessing to the clergy and to those who persecute him, and closes by asseverating that he yields only to force.

There has not as yet been time for any general expression by the press of the country upon the action of the government in this affair. It will probably be approved by the great majority of the Protestant population and by the Liberal Catholics. I hear, however, in private circles, from persons who have no affiliation or sympathy with the Catholic Church, expressions of doubt as to its wisdom, and regret that the republic of Switzerland, distinguished for its tolerance in most regards, should, in this instance, have adopted a procedure so analogous to the methods of arbitrary government.

The discussions upon the bill regulating the organization of the Catholic Church in the canton of Geneva, and providing for the election of curés by the congregations, have not yet closed. The proposition for a complete separation of church and state was rejected, receiving only fifteen votes in a body consisting of one hundred and ten members.

I have, &c.,

HORACE RUBLEE.

No. 440.

Mr. Rublee to Mr. Fish.

No. 124.]

LEGATION OF THE UNITED STATES,
Berne, February 20, 1873. (Received March 15.)

SIR: I have the honor to transmit herewith a translation of the material part of an article on the Mermillod affair, which appeared in the Bund of this city on the 18th instant. The Bund is regarded as the semi-official organ of the government, and in defending the expulsion of M. Mermillod, and explaining the motives upon which that measure was based, it doubtless utters the views of the Federal Council. As such a semi-official exposition you may find its article of some interest.

I have, &c.,

HORACE RUBLEE.

[Inclosure—Translation.]

The expulsion of Mermillod.

[From the Bund, February 18.]

* * * * The action of the Federal Council in expelling Mermillod has occasioned surprise in some quarters, and persons are not wanting who, regarding it as the banishment of a Swiss citizen, hold that an unconstitutional punishment has been inflicted. This view is, in several respects, incorrect. The expulsion of Mermillod is not a punishment; it is rather a political measure of prevention, adopted to avoid the *de facto* establishment within the territory of the confederation of a foreign authority unrecognized by the government of the country. The measure was not directed against Mermillod as a Genyese or Swiss citizen, but against the plenipotentiary and representative of the Holy See, in so far as he would establish in the canton of Geneva, by evading the proper state authorities, the authority of the Roman curia. The decree of expulsion has no punitory effect upon the person of Mermillod. From the moment that he renounces his pretensions, founded upon the papal brief of the 16th of January, issued in violation of the rights of the authorities of the country, he is at perfect liberty to return to Geneva. But the honor and dignity of the state require that the Federal Council should insist upon such a renunciation. If Mermillod cannot consent to this recognition of the authority of the government of the country over its own territory, he cannot complain if he is prevented from offering it further defiance within its own sovereign domain. Looked at and judged from this point of view, no unprejudiced mind can avoid the conclusion that the Federal Council is fully justified in the action it has taken, and that the so-called martyrdom of Mermillod is of a very cheap quality.

It is an error, also, to allege that the expulsion of a Swiss citizen is in no case constitutional. There is nothing in the constitution to warrant such an opinion. Indeed the constitution, in the interests of public order and religious peace, prohibits the order of Jesuits and all affiliated societies within the limits of the confederation, making no distinction between Swiss citizens and foreigners. The Swiss citizen who is a Jesuit is forbidden to sojourn in Switzerland. The analogy between this constitutional provision and the measure of the Federal Council expelling Mermillod is sufficiently apparent. There can be, then, no question as to the constitutionality of the action of the Federal Council. It is not the Swiss citizen Mermillod who is banished; he can return to his native country whenever he will promise to respect the laws of the land and abstain from representing a foreign power in our country. It does not well become a Swiss citizen who, against the laws of the republic, places himself in relations with a foreign authority, to parade his Swiss citizenship, for he is practically a foreigner. The quality of a Swiss citizen is not designed to serve as a hypocritical shield, from behind which to bid defiance to the sovereignty and laws of the country.

There are others who assert that Mermillod should have had a trial before a court of justice; that an expulsion by an administrative order, without a judicial sentence, is unwarrantable. Such persons overlook the fact that in the Mermillod affair it is not a question of individual offense, of a violation of the penal code, but rather of a collision between two public powers, (*öffentliche Gerwalten*), upon one and the same state jurisdiction, making it necessary for the state, from motives of self-preservation, to set aside the conflicting power of the Church. Mermillod is not, personally, a criminal; he has not committed any offense which subjects him to prosecution before the court for violating the provisions of the penal code; but his longer continuance in the canton of Geneva as apostolic vicar, after the papal brief of January 16 has been pronounced null and void by the government, is inconsistent with the dignity of the Swiss state. The whole controversy rests upon diplomatic and political grounds, and, in this domain, the state cannot recognize the authority of the courts as superior to its own. The Federal Council, therefore, cannot submit to the decision of any court whatever the question whether, upon the territory of the confederation or in the representation of Switzerland abroad, its own authority shall or shall not have the preference to that of a spiritual dignitary, commissioned by the Pope and unaccepted by the federal government.

* * * * *
The Federal Council has, moreover, directed the expulsion of Mermillod with the full consciousness of its responsibility to the Federal Assembly, and will be fully able to justify the proceeding before the confederate councils.

No. 441.

Mr. Rublee to Mr. Fish.

No. 125.]

LEGATION OF THE UNITED STATES,
Berne, February 26, 1873. (Received March 21.)

SIR: The conflict between church and state, at Geneva, and in the cantons composing the diocese of Basle, continues to form the principal subject of public interest in Switzerland.

The expulsion of Mgr. Mermillod is generally approved by the press of the country not avowedly Catholic. The exceptions are certain journals devoted to the interests of the party opposed to a revision of the federal constitution. By the Catholic journals, the expulsion is denounced as a despotic and unconstitutional exercise of power, and Mgr. Mermillod is represented as an unoffending victim of persecution, in whose person the rights of the Church and the rights of a Swiss citizen have alike been ruthlessly violated. He remains at Fernex, within three miles of his late episcopal residence, the recipient of continued attentions and ovations from his admirers and followers, and, without doubt, wielding a wider and more effective influence over the Catholic population of Geneva than when actually officiating as apostolic vicar within the canton. The Pope has sent him a letter of encouragement and benediction, and the clergy of France, Belgium, and Switzerland are showering upon him the expressions of their sympathy and regard as a sufferer for the cause of truth and righteousness.

The bill proposing a modification of the constitution of the canton of Geneva in relation to the Catholic Church finally passed the grand council last week by a vote of 76 to 8. Among its supporters were a considerable number of Catholic members. It will be submitted for ratification by a popular vote on the 23d of March. The bill provides that the curés and vicars, whose salaries are paid by the Church, shall be elected by the Catholic citizens inscribed on the list of cantonal electors. Their appointments will be revocable. Only the diocesan bishop recognized by the state shall have episcopal jurisdiction; he may appoint a substitute with the assent of the council of state; the latter, however, may at any time withdraw its consent. The Catholic parishes of the canton must form part of a Swiss diocese, but the seat of the bishop shall not be established in the canton of Geneva. The number and limits of parishes, the election of curés and vicars, the oath required of them on entering office, the circumstances compelling revocation, &c., will be regulated by law.

Prior to the passage of this bill a remonstrance, signed by the mayors of the Catholic communes of the canton, was read in the grand council. These functionaries alleged that the measure proposing to re-organize the Catholic Church, without the consent of the Catholics, was highly unpopular, and that, instead of allaying, it would only serve to increase the unfortunate dissensions already existing, and would never be accepted by their communes.

In the diocese of Basle the difference between Mgr. Lachat and the governments of five of the seven cantons comprised in it are becoming more and more pronounced and irreconcilable. I have detailed in my dispatch No. 122, of February 4, the action of the diocesan conference declaring the bishop's seat vacant and inviting a chapter to name a substitute *ad interim*. In compliance with this invitation the chapter held a meeting, but decided that the action of the conference was inadmissible, that no vacancy existed, and that Mgr. Lachat remained

the rightful bishop. At the same time Mgr. Lachat issued an elaborate protest against the action of the conference, in which he denied that he had in any manner transcended the proper limits of his authority or violated the civil or canon laws. Another meeting of the conference was held on the 14th and 15th of the present month, at which it was resolved, in view of the refusal of the chapter, that the conference itself would appoint a substitute for the temporary administration of the diocese. At this meeting the cantons of Zug and Lucerne were not represented in the conference. The appointment of a substitute by the conference has not yet been announced. In the meantime the five cantonal governments have caused notice to be served upon the Catholic clergy forbidding them to recognize Mgr. Lachat as bishop or to hold any official relation with him. In the canton of Soleure the clergy have formally replied that they will continue to recognize Mgr. Lachat as their rightful bishop, and that, while loving their fatherland and respecting its authorities and laws, their veneration and esteem are equally due to the authorities and laws of the Holy Catholic Church; that the deposition of a bishop by the secular power is a thing unheard of hitherto, and that whoever recognizes such a decision excommunicates himself. In Thurgovie the clergy have taken a similar attitude, and out of 4,759 Catholic voters 4,339 have signed an address remonstrating against the action of the diocesan conference, declaring that they still recognize Mgr. Lachat the rightful bishop, and protesting against the order forbidding the clergy to continue relations with him.

Much irritation and excitement is reported to exist among the people, especially in the canton of Soleure, and the cantonal government, on yesterday, ordered two battalions of infantry and a company of sharpshooters to hold themselves in readiness in case their services should be required for the maintenance of order.

The Federal Council have been engaged in considering measures for the adjustment of the conflict, but have not as yet arrived at a definite decision. Their intervention in the affair will, however, in all probability, occur within a few days.

There is little doubt in my judgment that the futility of measures like the expulsion of Mgr. Mermillod for the accomplishment of any good and desirable results will be sufficiently apparent before the present dissensions have terminated. They inflame, instead of allaying, sectarian animosities. Instead of diminishing, they increase and fortify the influence of the clergy. Among the Protestant population there is an under-current of doubt and distrust as to the wisdom and good policy of measures which, although they may be within the limits of legality, have so much the aspect of intolerance and oppression. These sentiments will increase and manifest themselves more openly as the consequences of such procedure develop and their inefficacy to correct the evils against which they are directed is demonstrated.

I am, &c.,

HORACE RUBLEE.

No. 442.

Mr. Rublee to Mr. Fish.

No. 128.]

LEGATION OF THE UNITED STATES,
Berne, March 26, 1873. (Received April 16.)

SIR: The amendment to the constitution of the canton of Geneva, providing that the curés and vicars of the Catholic Church, whose sala-

ries are paid by the state, shall be chosen by the Catholic citizens inscribed on the list of cantonal electors, was accepted by the popular vote at an election held on Sunday the 23d instant.

Several days previous to the election the mayors of the Catholic communes united in signing and publishing a manifesto, addressed to the Catholic electors, denouncing the proposed amendment in energetic language, and enjoining upon all Catholics to abstain from participation in the election. They asserted, in this address, that the Catholics would never accept such a law, or recognize the right of the state to enact it, and, consequently, that it was the duty of Catholic voters to take no part in the vote upon it. The same policy was strenuously urged by the clergy and by the Catholic journals.

The opponents of the measure, therefore, for the most part, withheld their votes. The result of the election was 9,081 votes for the amendment and 151 against it. The latter were cast chiefly by Protestants, who disapproved of it.

The partisans of the amendment are well content with their success. The largest vote polled at any general election in the canton, when rival parties were warmly contending for the ascendancy, has rarely exceeded 11,000, and the whole number of registered voters is only a little more than 16,000. The amendment is, therefore, approved by a considerable majority of the whole body of electors, and by the great majority of those who usually take part in elections. Its most earnest supporters were the Liberal, or Old, Catholics, and the vote indicates, it is said, that this class comprises a much greater proportion of the Catholic population of the canton than has hitherto been supposed.

Throughout Switzerland the Liberal Catholics are forming societies, holding meetings, publishing addresses, and with great energy seeking to mold public sentiment in opposition to the dogma of infallibility and to the influence of the clergy in civil affairs.

The situation in the diocese of Basle has not materially changed. No administrator *ad interim* of the diocese has yet been named. The bishop, sustained by the clergy with few exceptions, continues to refuse to recognize the authority of the diocesan conference, or the right of the cantonal governments to interfere in the affairs of the Church. The cantonal governments, however, manifest no disposition to abate their pretensions. An inventory of the property in the bishop's residence was recently made by the government of Soleure, in accordance with the request of the diocesan conference, and Mgr. Lachat will doubtless be expelled from it on or before Easter.

The supporters of the bishop have circulated petitions in the canton of Soleure, addressed to the cantonal government, requesting it to withdraw its adhesion to the action of the diocesan conference, and to call a meeting of the grand council for the purpose of submitting the question to the popular vote. Counter petitions, however, were promptly sent out, and were signed by a majority of the electors. The petitions favorable to the bishop united only about one-third as many signatures as were obtained for those sustaining and approving the action of the government.

The latest incident of importance in the controversy is the suspension by the government of Berne, from the exercise of ecclesiastical functions, of ninety-seven Catholic curés in the Bernese Jura. This district of the canton of Berne is occupied by a population speaking the French language, and almost exclusively Catholic. About two weeks since the curés of the Jura signed and published a protest against the decisions of the diocesan conference relating to the bishop of Basle, and the

action of the government of Berne in sustaining the conference. They further declared that they would not respect the order of the government forbidding them from holding further official relations with Mgr. Lachat as bishop of Basle.

The government of Berne, as soon as it had taken cognizance of this announcement, issued an order suspending the curés, and dispatched a circular to the prefects of the Jura directing them to take measures at once, with the aid of the police, to prevent the curés from the further exercise of any parochial functions, to withdraw from their keeping the registers of baptisms, marriages, and deaths, and to warn the mayors and municipal councils that any disturbance of the public peace will be promptly suppressed by military force, at the expense of the communes in which disorders may arise. A curé at Bienne, who refused to deliver up the keys of his church, was imprisoned, but, after a few hours' confinement, delivered them, and was released.

I have, &c.,

HORACE RUBLEE.

No. 443.

Mr. Fish to Mr. Rublee.

No. 107.]

DEPARTMENT OF STATE,
Washington, March 28, 1873.

SIR: By the St. Laurent, from New York on the 5th of April next for Havre, will be sent, to the care of Mr. Washburne at Paris, two cases of silver intended to be presented to Mr. Staempfli on behalf of the United States, as a mark of their appreciation of the ability, learning, dignity, and impartiality with which he performed his arduous duties at Geneva.

I inclose a copy of the instructions to Mr. Washburne, by which you will perceive that he is to retain these sets until he receives directions from you as to the time and manner of forwarding them. It is presumed that there will be no difficulty in securing their admission duty-free and unopened into the territories of Switzerland, and it is greatly to be desired that they should not remain on deposit in Paris any longer than is absolutely necessary.

I would suggest that you should be prepared, either personally or otherwise, to receive the silver at Berne as soon as it can be forwarded there from Paris and deliver it to Mr. Staempfli.

In delivering it, you will say that it is presented to him in the name of the United States, as a mark of their appreciation of the dignity, ability, learning, and impartiality with which he discharged his arduous duties at Geneva, and as an expression of the President's deep sense of the unselfishness with which he devoted his time and his great abilities to the solution of the different questions which had there arisen between Her Britannic Majesty and the United States, and which are now so happily laid at rest by the action of the tribunal of arbitration of which Mr. Staempfli was so distinguished a member.

Any necessary expenses which you may incur may be charged in a separate account, as incurred under the provisions of the act approved December 21, 1871, entitled, "An act making appropriations for expenses that may be incurred under articles 1 to 9 inclusive, of the treaty be-

tween the United States and Great Britain, concluded at Washington May eighth, eighteen hundred and seventy-one," and you will draw on the Secretary of State for the amount.

I am, &c.

HAMILTON FISH.

No. 444.

Mr. Upton to Mr. Fish.

No. 4.]

LEGATION OF THE UNITED STATES,
Berne, April 28, 1873. (Received May 21.)

SIR: Yesterday evening I had the pleasure of delivering to Mr. Staempfli, at his house, (the time and place having been previously fixed by him,) the service of silver sent by you to be presented to him as a testimonial of the appreciation of the United States of America, and as an expression of the President's deep sense of the ability and impartiality with which he discharged his arduous duties as a member of the tribunal of arbitration at Geneva. I read, and afterward handed to Mr. Staempfli, a copy in the French language of the message which Mr. Rublee was instructed to deliver with the testimonial, which he received with thanks.

Mr. Staempfli's family was present on the occasion, and so soon as the brief ceremony was over the ladies busied themselves with evident delight in taking the various articles from the cases and in arranging them upon the tables.

I am, &c.,

CHAS. H. UPTON,
Chargé d'Affaires, ad interim.

No. 445.

Mr. Rublee to Mr. Fish.

No. 133.]

LEGATION OF THE UNITED STATES,
Berne, June 30, 1873. (Received July 24.)

SIR: I have the honor to acknowledge the receipt of your dispatch marked "separate," of the 4th instant, informing me that a letter of credit will be forwarded to Messrs. Clews, Habicht & Co., of London, authorizing me to draw upon them for the sum of five thousand francs (5,000) to enable me to re-imburse the Swiss government for the money advanced to Mr. Staempfli, the Swiss member of the Geneva tribunal of arbitration, for his expenses in connection with the said tribunal.

Having been advised by Messrs. Clews, Habicht & Co. of the receipt by them of the aforesaid letter of credit, I have this day drawn upon them, through my bankers in this city, Messrs. Marcuard & Co., for the sum of one hundred and ninety-nine pounds three pence, the equivalent of the sum of five thousand francs, including the bankers' commission, which amount I have paid over to the Swiss government.

I inclose herewith the note of Messrs. Marcuard & Co., showing the

rate of exchange paid, and further the receipt of the cashier of the federal treasury for the sum of five thousand francs re-imbursed by the Government of the United States to the Swiss confederation, being one-half the amount advanced by the latter for the tribunal of arbitration held in Geneva in the year 1872.

The minister of Great Britain, accredited to the Swiss confederation, made a similar payment into the federal treasury several days ago.

I am, &c.

HORACE RUBLEE.

No. 446.

Mr. Rublee to Mr. Fish.

No. 134.]

LEGATION OF THE UNITED STATES,
Berne, July 10, 1873. (Received July 31.)

SIR: The Federal Assembly of Switzerland met on Monday, the 7th instant. An unusually large amount of business is submitted by the Federal Council to the consideration of the chambers. The most important subject thus presented is the report of the Federal Council, in compliance with the instructions of the assembly at its session in December last, upon resuming the attempt to revise the constitution of the confederation. The message of the council, and accompanying propositions, modifying, to some extent, the projects of revision rejected by the popular vote in 1872, will probably be postponed and become the occasion of a special session, to be held some time during the coming autumn.

Under the new law of the last session vesting the right of legislation in regard to railways exclusively in the federal legislature, thirty different bills, mostly for concessions for new lines of railways, are presented, and among the motions set down on the official list is one in regard to federal legislation in ecclesiastical matters, and proposing the dismissal of the papal mentiatuure in Switzerland.

I forward by the same mail with this dispatch, but in a separate inclosure, two copies, one in French and one in German, of the recently published reports of the several heads of departments of the Swiss government for the year 1872, together with two copies in French of the report of the committee of the national council thereupon.

By reference to pages 15 and 16 of the latter document, it will be seen that the committee of the national council recommended that the Federal Council be invited to denounce so much of the treaty of November 30, 1850, between the United States and Switzerland, as relates to extradition, unless the Government of the former shall formally declare that it will carry out the provisions of the treaty in such a manner that the object in view shall be really attained.

This part of the report of the committee came up for consideration in the national council on yesterday, when Federal Councillor Knüsel, chief of the department of justice and police, suggested that the proposition should be rejected.

He said that it was certainly more difficult in America to secure extradition in cases of fraud than in other cases, but this was no reason for denouncing the treaty. He explained that in the United States the proceedings upon a demand for extradition were of a judicial nature, and that before the alleged criminal was surrendered certain evidence going

to establish his guilt must be produced. It did not appear that any other country except Switzerland desired a change of the system of extradition adopted by the United States. The latter had not such a regard for Switzerland that it would change its system merely to please us. Wherefore, then, denounce the treaty of friendship made in 1850? This would be going too far, and would produce an evil impression in America. Moreover, he added, the United States were not altogether pleased at present with us, in view of the fact that while they had a minister here we were represented simply by a consul at Washington. The proposition of the committee had, therefore, better be dropped.

It was thereupon tabled by unanimous consent.

I have, &c.,

HORACE RUBLEE.

No. 447.

Mr. Rublee to Mr. Fish.

[Etract.]

No. 137.]

LEGATION OF THE UNITED STATES,
Berne, July 26, 1873. (Received August 22.)

SIR: The Federal Assembly of Switzerland, now in session, has decided to meet on the third of November next, and to hold a special session at that time for the purpose of renewing the attempt to revise the existing constitution.

In compliance with the motion adopted by the two houses in December last, the Federal Council has submitted a report upon the question of revision.

* * * * *

Adopting as the basis of deliberations the project of revision rejected last year by a small majority of the popular vote, the Federal Council proposes a number of modifications of the project in question, and some additional articles. The report seeks to conciliate the more moderate class of the anti-revision majority of last year by sundry concessions to the cantonal or state rights sentiment, and is, for the most part, favorably received by the press, excepting, of course, the organs of the Ultramontane party.

It drops the clause in the former project which authorized the federal government to fix the minimum of instruction to be given in the primary schools. It enlarges and gives a more clear and definite form to the articles relating to the rights of conscience, liberty of worship, and other cognate matters; civil marriage is made obligatory. The keeping of the civil registers is withdrawn from the hands of the clergy; a new article specifically prohibits the erection of bishoprics within the territory of the confederation without the assent of the government.

In regard to the organization of the army and the adoption of a uniform code of civil and penal law, some concessions, for the most part rather in form than in substance, are made to cantonal feeling. The paragraph requiring that each of the three national languages shall be represented in the federal tribunal is omitted.

There is also a new article, authorizing the Federal Council to expel any person from Swiss territory who assumes to exercise official functions therein in the name of a foreign power or authority without the

assent of the confederation, which of course has already been seized upon by the Catholic party as an admission that, in decreeing the expulsion of Mgr. Mermillod, the Federal Council acted without authority of law, and in violation of the rights of a Swiss citizen.

The report of the Federal Council has been referred to a committee of the two chambers, which will report upon it to the Federal Assembly at the opening of the special session in November.

I have, &c.,

HORACE RUBLEE.

No. 448.

Mr. Rublee to Mr. Fish.

No. 139.]

LEGATION OF THE UNITED STATES,
Berne, August 4, 1873. (Received August 30.)

SIR: The Federal Chambers of Switzerland adjourned on the 2d instant to re-assemble again on the 16th of September, when a short session will be held for the purpose of agreeing upon the form of railway concessions under the law of last winter, which vests the right of legislation on the subject of railways exclusively in the Federal Assembly, and to act upon sundry applications for such concessions recently made.

A considerable part of the session which has just terminated has been occupied with questions growing out of the religious controversies which exist in the cantons of Soleure and Geneva.

An appeal was taken by the pastoral conference of the Catholic Church of the canton of Soleure from the decision of the Federal Council sustaining the validity of the law adopted by the popular vote of the canton in December last, relating to the election of curés. The principal objection taken against the validity of the law by the conference is, that it violates the article of the cantonal constitution which places the exercise of the Christian religion, according to the Roman Catholic or Reformed Evangelical confession, under the protection of the state. This protection, according to the conference, applies to the entire ecclesiastical constitution, and since the new law limits the duration of a curé's functions to six years, it violates a fundamental rule of the Catholic organization by which ecclesiastical functions and benefices are conferred for life.

This view of the subject was rejected by large majorities in both houses of the assembly. It was there contended that by placing a religious sect under the protection of the state the legislative power did not intend to deprive itself of all liberty of action, and by accepting any principle laid down by a church to forfeit the supremacy of the state. The appeal could not be maintained unless it were shown that the new law was inimical to the essence of Catholicism, and it could not be demonstrated that the election of ecclesiastics for a specific term of office conflicts with an essential part of the creed which the state has promised to protect.

Petitions were also addressed to the assembly by the Catholic clergy of Geneva, asking that the federal sanction might be withheld from the law adopted by the canton in March last regulating the election of curés of the several Catholic parishes. The petitioners alleged that the law is inconsistent with the guarantee of the free exercise of wor-

ship contained in the federal constitution and with the stipulations of the treaties of Vienna of 1815, and of Turin in 1816, by which the canton of Geneva agreed to maintain and protect the Catholic religion in the communes detached from Savoy as it had existed under their former sovereigns. In the discussion upon these petitions similar arguments were employed to those in response to the appeal from the canton of Soleure. As to the treaties, it was remarked that they had no force except between the contracting parties, and hence a Swiss citizen could not invoke them; nor, since by its annexation to France Savoy had passed from the religious *régime* of Sardinia, could the King of Italy very consistently demand of Geneva the maintenance of the Sardinian *régime*.

The federal sanction was accordingly given to the law.

The expulsion of M. Mermillod from Swiss territory, by order of the Federal Council, was the subject of a long discussion in each of the chambers. Remonstrances by the Catholic clergy and by M. Mermillod himself had been addressed to the assembly characterizing the expulsion as an arbitrary, an illegal act, and calling upon the assembly to intervene and restore M. Mermillod to his rights as a Swiss citizen.

I subjoin a *résumé* of the majority and minority reports of the committee appointed by the national council to consider these remonstrances or memorials, and of the more important parts of the discussion which followed.

The majority report opened with a brief historical statement respecting the past relations between Geneva and the Catholic Church. In the year 1535, at the breaking out of the reformation in Geneva, the bishop of Geneva fled to Annecy, and the bishopric of Geneva existed at Annecy until 1801. It was then formally annulled by a concordat, and the district which it comprised was annexed to the archbishopric of Chamberg. At the downfall of the first empire, when the question arose of rounding off the boundaries of Geneva and uniting it as a canton with the Swiss confederation, an attempt was made to detach from the foreign spiritual jurisdiction and to annex to a Swiss bishopric the Catholic parts of the new canton. This was accomplished notwithstanding the opposing efforts of the Catholic curé Vuasin of St. Germain, by the papal bull "*intermultiplices*," of September 30, 1819, which united the Catholic parishes of Geneva in perpetuity with the Swiss bishopric of Lausanne-Fribourg. But Vuarin did not accept his defeat. In 1824 he proceeded to Rome and proposed to the Pope to separate Geneva from the diocese of Lausanne-Fribourg and to set up anew the ancient Episcopal chair of St. Francis of Sales. The then bishop of Lausanne, Jenny, was to be induced by the Holy See to renounce his jurisdiction over the Catholics of Geneva; but this scheme, though favorably received at Rome, failed in consequence of the firmness of Bishop Jenny, who would not abandon his episcopal rights. Nevertheless, the project of the re-establishment of the bishopric of Geneva was not relinquished, but was merely postponed.

After the death of Vuarin, Mermillod took up the scheme with new zeal. He succeeded the Abbé Cunoyer in 1864, as curé of Geneva, and General Vicar of the diocese of Lausanne-Fribourg. Directly he was made Bishop of Hebron *in partibus* and auxiliary bishop of Geneva by the Pope. The government of Geneva protested against the latter quality of the curé. Soon after another step followed; in 1865 Mermillod was invested by the bishop of Lausanne-Fribourg with plenary powers for the canton of Geneva. Unfortunately the council of state of Geneva neglected to act with proper energy in opposition to this new

extension of the pretensions of the vicar-general. The affairs stood thus when, in 1870, the bishop of Lausanne-Fribourg was induced to announce that he had relinquished his episcopal rights of administration in the canton of Geneva to the vicar-general and auxiliary, Mermillod. By this time the government of Geneva saw this situation clearly and protested against the change. The result of long negotiations was, that in the autumn of 1872 the bishop of Lausanne explicitly renounced the canton of Geneva as a part of his diocese, and dropped the honorary title of bishop of Geneva. The authorities of Geneva of course refused to recognize this one-sided renunciation. Thereupon followed the papal brief of the 16th of January last, declaring the canton of Geneva missionary-ground and appointing Mermillod apostolic vicar. The patience of the cantonal authorities was finally exhausted. When Mermillod refused to divest himself of the office which he had assumed without regard to the laws of his country, his expulsion from the canton and the confederation followed by order of the Federal Council.

With reference to the legal questions involved in the affair, the kind or quality of the union existing between Geneva and the diocese of Lausanne must be first of all considered. According to the views of the petitioners, this union resulted from an authoritative act of the Pope, and could therefore be dissolved again by him. This opinion, however, was entirely erroneous. It was in contradiction with the principle of public law always maintained in Switzerland, that no circumscription or alteration of dioceses can take place without the concurrence of the political authorities. The annexation in 1819 of Geneva to the diocese of Lausanne rested upon a concordat in which not only Geneva but the diet of the confederation participated. The right of the confederation to a voice respecting the formation or modification of dioceses had recently been recognized by the Church in connection with negotiations relative to the cantons of Tessin and Berne. The attempt to establish a bishopric of Geneva without consultation with the civil authorities, was, therefore, an attack upon the general law and upon the legal status of the diocese of Lausanne.

The petitioners complain of the oppression of the Catholic Church in Geneva. In sharp inconsistency with this complaint was the circumstance that between 1822 and 1870 the Catholic population of the canton had increased 142 per centum, and of the city 164 per centum, while the increase of the whole population had been but 82 per centum. In 1822 the Catholics were 38 per centum of the population; in 1870 they constituted 51 per centum. Further, in regard to the financial support of the Catholic Church and clergy, the government of Geneva had constantly shown itself liberal and impartial.

The petitioners especially denounced the expulsion of Mermillod, a Swiss citizen, as a violation of the constitution. The majority of the committee did not regard this point as well taken. The controversy with Mermillod had assumed the form of a political contest between the authorities of the country and a foreign ecclesiastical power. Mermillod stood forth as the agent of this ecclesiastical power, and declared that his duties as a citizen were subordinate to his duties as a functionary of the Church. He was therefore debarred from appealing to his rights as a citizen. The political authorities must have the right to expel from the country the agents of foreign powers, regardless of their citizenship. The expulsion of a Swiss citizen was not expressly provided for in the constitution, neither was it expressly prohibited, and if a provision had been suggested for the revised constitution regu-

lating the subject, it was in no wise to be regarded as a confession that Mermillod's expulsion was unconstitutional; it was merely to give formal and definite expression to political right which existed in the nature of things. The order expelling Mermillod was directed not against the Swiss citizen, but against the papal agent, whose machinations could not be shielded by his Swiss citizenship.

It had been said that Mermillod should have been arraigned before a judicial tribunal, but such a tribunal was not competent to sit in judgment upon an international political conflict between the authorities of the country and the Holy See. International political relations could not be submitted to the rules of a civil or criminal process. Besides, in consequence of the purely political nature of the affair, it would have been difficult to have found any provision of the criminal code applicable to it. The expulsion was not for punishment, but for defense against the attempted encroachments of a foreign power upon the public law of the country.

In view of these considerations, the majority of the committee moved that the house, regarding the complaints of the petitioners as unfounded, pass to the order of the day.

The minority of the committee reported that, according to ancient and modern ecclesiastical law, the Pope has the right of establishing bishoprics. This right had been frequently exercised by the present Pope in England, the Netherlands, and America, without remonstrance on the part of the state. A modification of this right exists only in virtue of special agreements or concordats. In Switzerland also, from ancient time, the old legal maxim had been held good that the Pope establishes the bishoprics. The question in the present case of establishment or modification was not of serious importance. It related not to a bishop of Geneva, but simply to an apostolic vicar, who chanced to bear the title of bishop of Hebron. During more than seven years the Genevese authorities allowed Mermillod, without interference, to act as general vicar of the bishopric of Lausanne. After that, when the bishop of Lausanne had resigned his jurisdiction over Geneva, it could not be a crime to place there provisionally a spiritual authority to exercise the vacated functions. In his intercourse with the council of state of Geneva Mermillod designated himself, not as bishop or the bearer of any papal dignity, but merely as a provisional functionary.

For this harmless procedure the Federal Council expelled the Swiss citizen, Mermillod, from his fatherland. If he had been guilty of any crime he should have been brought before a legal tribunal. The summary administrative justice of which Mermillod was the victim ought to cause others besides ultramontane citizens to reflect. It had but one precedent in the course pursued by the Schaller government of Fribourg against Bishop Murilley, after the war of the Sonderbund. It was especially deplorable that such a proceeding should have occurred at Geneva, hitherto the proverbial refuge of the persecuted. But Geneva sheltered itself under the command of the confederation. Nothing had occurred to justify the allegation of the Federal Council that the continuance of Mermillod at Geneva endangered the public peace, and punishment should not precede the fact. Article 58 of the constitution provides that foreigners may be expelled from Switzerland when they endanger the internal or external peace. The fact that this article expressly referred only to foreigners warranted the conclusion, in the judgment of the minority, that Swiss citizens could not be expelled. Even a bishop was entitled to the constitutionally guaranteed liberty of establishment, (*niederlassungsfreiheit*), in so far as he is a Swiss citizen.

The report closed by demanding that the recognized Catholic Church should be treated equitably and justly, and moved that the complaint of the petitioners should be declared well founded.

In the discussion which followed, M. Cérésolle, the President of the Confederation, said that on the 23d of December last the Federal Council informed the papal chargé d'affaires that it would not consent to the establishment of a bishopric of Geneva, and that negotiations for the establishment of a vicariat-apostolic in Geneva could only be pursued on condition that the government of Geneva should be first consulted, and that the vicariat should not be conferred upon M. Mermillod. The Pope replied by the brief of the 16th of January, instituting M. Mermillod vicar-apostolic of Geneva, and this document was only officially communicated to the federal government on the 3d of February, after it had been read in all the Catholic churches of Geneva. The papal brief asserted pretensions that it was impossible to tolerate, and with the insolent manner with which it was smuggled in behind the backs of the proper authorities would have justified the Federal Council in at once severing all intercourse with the papal chargé d'affaires; but the council desired to avoid this, out of regard for the Catholics of Switzerland and the position of the chief of the Church. The speaker said, in reply to the point that Mermillod should have had a trial, that there was no law making it a misdemeanor for a Swiss citizen to accept the functions of a representative of a foreign power; hence the Federal Council had not held that there was a misdemeanor in the strict sense of the word, but there was a manifest purpose on the part of Mermillod, as the representative of a foreign power, to oppose the national authorities, and the dignity of the political power was interested in seeing that such opposition should be without effect.

In the course of his remarks M. Cérésolle took occasion to characterize as false and slanderous certain charges made in Swiss and French newspapers that the Federal Council, in the Mermillod affair, acted in complicity with Prince Bismarck, and in a spirit of servility toward the German Empire. If there had been any improper international intrigues in connection with the Mermillod affair, they had proceeded, not from the Federal Council, but from those who had contested its action. The utmost had been done to move France to intervene, though in vain, for the great majority of French statesmen were disinclined to it, and the French government had repeatedly declared that it would take no part in our religious controversies. The source of these machinations against Switzerland was easy to find. It was only to divert attention from themselves that the conspirators sought to attribute their own crimes to others.

Among others who took part in the discussion, M. Dubs, for many years a member of the Federal Council, and repeatedly President of the Confederation, said that he fully approved of the action of the Federal Council respecting the controversy with Mermillod in all save the expulsion. The constitution granted no power to expel a Swiss citizen, according it exceptionally in the case of foreigners only. The expulsion offended the Catholics, created a martyr, and, in a political point of view, accomplished nothing. The difficulty should have been settled either in a diplomatic way, or by a judicial proceeding; yet as Mermillod had certainly been the aggressor, the speaker would not vote with the minority of the committee, neither could he sustain the majority, and consequently he should abstain from voting on the question.

At the close of the discussion the majority report was sustained by a vote of 79 to 23. Four members declined to vote. A similar discussion

occurred in the council of states, resulting in the rejection of the appeal of the petitioners by a vote of 26 against 13.

At a session of the National Council some days after the discussion upon the expulsion of Mermillod, the statements made by President Cérésolé respecting the attempts of Mermillod's supporters to secure the intervention of France were the subject of an interpellation by M. Segesser, of Lucerne, a prominent and influential Catholic leader. He said that since the defeat of the revision last year the party to which he belonged had been charged with receiving its orders from Rome; with having no political will of its own, and with attempting to secure foreign intervention at the time of the Sonderbund war, the latter, an old accusation, long ago sufficiently refuted. Because his party was thus suspected, it could not allow suspicions to rest upon it, and he now called for further explanations from the President. He regarded the talk about Prussian influence in the Mermillod affair as absurd, and disapproved the charges made in that respect against the Federal Council. Bismarck might have felt an interest in it; and recent events in Germany might have had a certain influence upon the Federal Council in determining its policy; but this did not constitute diplomatic intermeddling.

M. Cérésolé in response thanked M. Segesser for his interpellation, and said that had there not been a question of the influence which events beyond the frontiers of Switzerland had exercised upon the federal authorities, he would not have noticed the charges brought against them of connivance with the German government, which had been systematically circulated for months back, both in Switzerland and elsewhere, by men who seem to have taken upon themselves the task of defaming the country and speculating upon the national hatred between France and Germany. French prelates had accused the Federal Council of treason, and Mermillod himself had dared to affirm that his expulsion was agreed upon between Bismarck and the federal authorities. Others had asserted that they had received money from Berlin to subsidize the Liberal press. After properly characterizing these charges and disclaiming any intention of charging men like M. Segesser with participating in foreign intrigues, M. Cérésolé proceeded to say that he had information from a perfectly trustworthy and official source that reiterated attempts had been made to induce diplomatic action on the part of France relative to the religious controversies in Switzerland. Several *mémoires* had been presented to the French government to demonstrate that it ought to interfere to protect the Catholic interests in Geneva. One of these documents was presented by Mgr. Dupanloup, and supported by several influential Catholic deputies in the National Assembly. This information being of a diplomatic character, M. Cérésolé said that he was obliged to speak of it with some reserve; but he might add that all these efforts proceeded from the party of which M. Mermillod was the center. In conclusion, the speaker stated that, in April last, M. Thiers, who was often accused of having but little sympathy for Switzerland, said to the Swiss minister at Paris, "I see very well what these ecclesiastics would be at, but they will not succeed; I will have nothing to do with anything of the kind; you may be assured of it, and I authorize you to write so to your government."

With the remarks of M. Cérésolé, the incident of the interpellation closed.

I have, &c.,

HORACE RUBLEE.

No. 449.

No. 145.]

LEGATION OF THE UNITED STATES,
Berne, September 18, 1873. (Rec'd October 17.)

SIR: The extent to which public attention in Switzerland is occupied by the controversies that have arisen between the civil authorities and the clergy of the Roman Catholic Church, as well as their political and social importance, warrants me in continuing to report to you their progress and development.

In a former dispatch, No. 128, of the 26th of March last, I mentioned the provisional suspension from the exercise of ecclesiastical functions, by the executive council of Berne, of a large number of curés in the district known as the Bernese Jura. The curés in question had published a protest against the action of the cantonal government in sustaining the declaration of the diocesan conference, which pronounced the episcopal seat of the bishopric of Basle vacant, giving notice therein that they still recognized Mgr. Lachat as the bishop of the diocese, and that they should disregard the order of the cantonal government, which forbade them to hold further official relations with him.

The case of the recusant curés was subsequently brought before the Bernese court of cassation, which pronounced upon it on the 15th instant. Sixty-nine of the curés were deposed, sentenced to pay the costs of the judicial proceedings, and each declared ineligible to be chosen as the curé of any parish of the canton until he shall have withdrawn the protest above mentioned.

The general situation in the diocese of Basle has not materially changed since last spring. Mgr. Lachat, expelled from the episcopal residence in Soleure, in April last, has established himself at Lucerne, and is recognized as bishop by the great body of the Catholics of that canton and of the canton of Zug. No definite action has yet been taken in relation to filling the vacancy in the bishop's chair, which is held to exist by the other five cantons of the diocese. The matter has been delayed in order to give time for the further development of the Liberal Catholic movement, which contemplates a complete severance from Rome, and the establishment of a Swiss national church.

An important conference of delegates of the Liberal Catholic societies or sections was held at Olten on the 31st of August. Eighty-eight delegates were present, representing thirty-eight sections. The reports indicated a satisfactory progress of the reform movement, and the central committee was authorized to appoint a commission to prepare and report, to a subsequent conference, a plan for the organization of a national church. A series of resolutions was adopted embodying the general views of the Liberal Catholics of Switzerland. These call for the establishment of a church conformable to that of the apostolic age, and in harmony with republican institutions, based, in its general organization, upon the parish, and developed upon a representative system, with the superior authority vested in a synod, composed of ecclesiastic and lay delegates from the parishes, which shall choose a bishop. The resolutions further demand the adoption of the vernacular in the services of the church; the suppression of perquisites paid for masses and other spiritual services, the salaries of the clergy to be increased in return therefor; the prohibition of the collection of Peter's-pence, of the traffic in indulgences, dispensations, &c.; the reduction, as far as possible, of religious fraternities, pilgrimages, penances, and the adoration of images; a modification of the conditions required by the clergy for the celebration of mixed marriages; the secularization of cemeteries; that

the clergy perform religious ceremonies at interments in all cases when desired by the family of the deceased; the establishment of non-confessional schools, &c. A deputation was also appointed to attend the congress of German Old Catholics, held at Constance the 12th, 13th, and 14th days of the present month.

It will be seen that, in Switzerland, this movement is a radical one. Its nature is more political than that of the corresponding movement in Germany. The Swiss prefer to call themselves Liberal Catholics, not caring to keep up the assumption that they remain stationary upon the ancient paths. A writer in a leading Swiss journal, in treating of the recent Old Catholic congress at Constance, thus refers to the distinction between the Old Catholics of Germany and the Liberal Catholics of Switzerland: "Is the character of the Old Catholic movement in Germany such that the Swiss can identify themselves unconditionally with it? I answer, without hesitation, no. We have grown up in an atmosphere wholly different from that of our German confederates. While they think to have settled everything by the election of a bishop, many among us consider that a bishop may be dispensed with, as a Pope has been dispensed with. While the Germans seem to idolize their bishop as much as ever the ultramontanes have done; while they leave him to preside over synods and synodal commissions, we Swiss would honor our bishop as we honor every worthy man, but would not idolize him, and would essentially limit his authority. Finally, while the German Old Catholics shun ridding themselves of such nonsense as holy water, &c., and only timidly display the device of 'Separation from Rome,' that has been our watchword from the beginning, and we have already abolished a variety of abuses. The sum total is, each country takes its peculiar way; the goal attained, however, we shall meet like-minded."

I am, &c.,

HORACE RUBLEE.

No. 450.

Mr. Rublee to Mr. Fish.

No. 146.]

LEGATION OF THE UNITED STATES,
Berne, September 26, 1873. (Received October 17.)

SIR: The special session of the Federal Assembly of Switzerland, held to consider and act upon applications for concessions for railways, closed on yesterday, after granting a large number of such concessions.

Considerable time was spent in agreeing upon a form for concessions conforming to the general railway law of the 23d of December last, copies of which I forwarded to the Department with my No. 118, of the 11th of January. I inclose two copies, together with a translation of the concession which it was determined to adopt as the model for future concessions, and also two copies of the regulations issued by the Federal Council under the act of December last, prescribing the steps necessary to be taken in applying for a railway concession, and the plans and documents required to be presented to the Federal Council before and after the construction of a railway.

I have, &c.,

HORACE RUBLEE.

[Translation.]

The Federal Assembly of the Swiss Confederation, in view of the request of the committee of initiation, dated 26th March, 1873, for a concession for a railway from Thun to Konolfingen, and of the letters of said committee of the 19th, 22d, and 27th of May, 1873, with inclosures, and in view of the message of the Federal Council of the 18th of June, 1873, decrees:

A concession is accorded to the committee of initiative for the establishment of a railway from Thun to Konolfingen, to construct and operate a railway from Konolfingen to Thun, via Drisbach and eventually from Konolfingen to Drisbach, upon the conditions mentioned in the following articles:

1. The federal laws and all other prescriptions of the federal authorities relative to the establishment and operation of Swiss railways are to be strictly observed, at what time soever they may go into effect.

2. The concession is accorded for the term of 80 years, dating from October 1, 1873.

3. The seat of the company is at Berne.

4. The majority of the directors and of the council of administration must be composed of Swiss citizens, having their domicile in Switzerland.

5. Within 12 months from the date of the grant of the concessions the grantees must present to the Federal Council the technical and financial documents prescribed by the law or the regulations, as well as the statutes of the company. The grading of the route must begin before the 1st of January, 1875.

6. The line must be completed and ready for operation by September 1, 1876.

7. The Federal Council is authorized, even after it has approved the survey, to require modifications thereof, if they should be necessary for the security of the operation of the road.

8. The road will be a single-track road.

9. Objects of scientific interest that may be discovered during the work of construction, such as fossils, coins, medals, &c., are the property of the canton of Berne, and must be sent free of charge to the cantonal government.

10. The administration of the road must furnish facilities to the federal functionaries charged with the surveillance of the construction and operation of the road, for the performance of their duties, by permitting them to inspect at all times the several parts of the route, and by placing at their disposition such assistants and means as are necessary.

11. The Federal Council may require that employés of the company who, in the exercise of their functions, give rise to well-founded complaints, and against whom the company neglect to take the necessary measures, may be called to order, punished, or, if necessary, dismissed.

12. Three passenger-trains, at least, will run daily in each direction over the whole line, stopping at all the stations.

The passenger-trains, comprising those designated as mixed trains, will have an average speed of at least twenty-four kilometers the hour. A less rate of speed is admissible only in the case of a special authorization of the Federal Council.

13. The regulations respecting transportation, which must be submitted to the Federal Council at least three months before the road goes into operation, cannot be put in force until formally approved. Every modification of the same must also be submitted to the approval of the Federal Council.

14. For the transport of passengers the company will establish three classes of cars, constructed after the American system. In general, each train will include cars of all the classes; exceptions to this rule can only be authorized by the Federal Council. The so-called mixed train may run without cars of the first class.

The company must at all times do all in its power to enable persons who present themselves to take tickets for a passenger-train, to be taken by the train in question, and to have seats therein.

Upon the demand of the Federal Council passenger-cars must be attached to freight-trains. The provisions of section 2 of article 12 are not applicable in this case.

15. The company is authorized to collect for the transport of passengers, by passenger-trains, a tax of which the maximum is fixed as follows:

First class, ten centimes the kilometer.

Second class, seven centimes the kilometer.

Third class, five centimes the kilometer.

The passengers carried by freight-trains the tax will be at least twenty per cent. less than the above.

In all classes children under three years of age, not occupying a seat, will be carried without charge; those between the ages of three to ten at one-half the tax. Each passenger is entitled to take with him ten kilograms of baggage free of charge, upon condition that it shall not be of a nature to incommode other passengers. The maximum tax for other baggage is fixed at two and one-half centimes the kilometer for fifty kilograms.

The company is bound to grant a reduction of twenty per cent. from the ordinary tax for tickets to go and return during the same or the following day.

It will grant a further reduction for tickets of subscription taken by passengers who propose to go over the same portion of the road, going and returning at least twelve times during a period of three months.

16. Indigent persons, who establish their character by a certificate from the proper authority, must be carried at half the ordinary rates. Upon the order of the federal or cantonal police authorities, persons under arrest must be carried on similar terms by the railway. Further regulations in this regard will be adopted by the Federal Council.

17. The maximum tariff for the transportation of cattle by freight-trains is fixed as follows by the head and the kilometer:

Horses, mules, and colts more than one year old, sixteen centimes.

Bulls, oxen, cows, heifers, asses, and young foals, eight centimes.

Calves, hogs, sheep, goats, and dogs, three centimes.

This tariff will be reduced twenty per cent. for the transport of herds filling an entire car.

18. Classes will be made for merchandise, the highest of which shall not pay more than one centime and the lowest not more than one-half centime for fifty kilograms the kilometer. An abatement will be made on merchandise transported by the car-load, (that is, for 5,000 kilograms, or five tons.) Raw material used chiefly for agricultural or manufacturing purposes, such as wood, coal, minerals, iron, salt, stone, manures, &c., by the car-load, will be taxed at the lowest possible rates.

For the transport of coin and valuables, the value of which is declared, the tax is not to exceed one centime the kilometer upon the value of 1,000 francs.

When cattle or merchandise are to be transported by express, the tax upon cattle may be increased forty per cent., and on merchandise one hundred per cent., above ordinary rates.

Agricultural products which the owners take with them on a passenger-train, though in a car apart, and receive immediately on reaching their place of destination, are exempt from tax if not exceeding 25 kilograms in weight. What exceeds this weight is subject to the ordinary tax of merchandise.

The company may require that merchandise forwarded, not exceeding 25 kilograms in weight, shall be sent by express, and may fix at its pleasure the tax for the transport of carriages and exceptional objects.

The minimum of tax for carrying a package may be fixed at 40 centimes.

19. In case of necessity, and especially when articles of food are exceptionally dear, the company is bound to introduce a lower special tariff for the transportation of grain, flour, vegetables, potatoes, &c. The terms of the tariff will be fixed by the Federal Council.

20. In the stipulation of taxes, the fractions of a kilometer will be reckoned as a whole kilometer. In regard to weight, goods sent, up to 25 kilograms, will be reckoned as 25 kilograms, and for merchandise sent by slow trains, from 25 to 50 kilograms as 50 kilograms. The excess of weight, (for baggage of passengers and merchandise by express above 25 kilograms, and for merchandise by slow trains above 50 kilograms,) is reckoned by units of 5 kilograms, each fraction of 5 kilograms being reckoned as a unit. In case of coin, or valuables, fractions of 500 francs will be reckoned as 500 francs. If the figure thus obtained is not exactly divisible by 5, it may be increased to the next multiple of 5.

21. The figures of taxes established by articles 15, 17, and 18 are applicable to transports from one to another station. The goods are to be delivered by the sender at the place of loading, and are to be taken by the person to whom they are addressed at the station to which they are destined. However, the company is to establish, itself, suitable arrangements for the cartage of goods and their delivery to the consignees. The loading and unloading of merchandise must be done by the company, and, as a rule, it cannot collect any special tax therefor. This rule can only be departed from with the assent of the Federal Council for certain classes of goods taken by car-loads entire, for live animals, and other articles, the shipment of which is attended with peculiar difficulties.

22. Special rules and tariffs will be established for the details of transportation.

23. All tariffs must be submitted to the approval of the Federal Council at least six weeks before the railway is opened for business.

24. If during three consecutive years the net proceeds of the enterprise exceed eight per cent., the maximum of taxes for transportation stipulated in this act shall be reduced in an equitable proportion. If the Federal Council and the company fail to agree in relation thereto, the Federal Assembly will decide.

If the proceeds of the enterprise fail to cover the cost of operating the road, the interest on the capital being included, the Federal Council may allow a reasonable increase of rates. However, these dispositions will be submitted to the approval of the Federal Assembly.

25. In cases where the company may intend to make fundamental changes in the

tariffs, it must submit the project, with the new tariff, to the approval of the Federal Assembly.

26. The company is bound to grant free access to the stations, to the functionaries charged by the Federal Council with the duty of supervising the operating of the railway; it is, besides, to guarantee them office-room without charge.

27. The following regulations will be applied for the exercise of the rights of repurchase by the confederation, or by the canton of Berne if the confederation does not exercise its right:

A. The repurchase cannot take place before the 1st of May, 1903, but may be made at any time after that date. Notice must be given to the company three years in advance of the repurchase.

B. In consequence of the repurchase, the buyer becomes proprietor of the line, with its material and all other appurtenances. In any case the right of third parties are undisturbed as relates to provisions made for pensions and aid. At whatever epoch the repurchase occurs, the road, with all its belongings, is to be delivered to the confederation, or to the canton of Berne, in a perfectly satisfactory condition. In the case that this condition should not be satisfied, and when the reserved funds do not suffice to cover the costs of putting the road in order, a proportional amount of the purchase-money will be withheld.

C. The indemnity for the repurchase will equal, in case of repurchase up to May 1, 1918, twenty-five times the amount of the average of the net proceeds during the ten years immediately preceding the epoch at which notice of the repurchase has been given the company; in case the repurchase takes place between the 1st of May, 1918, and the 1st of May, 1933, twenty-two and one-half times, and between the 1st of May, 1933, and the expiration of the concession, at twenty times the said amount of the net proceeds.

It is well understood, however, that the indemnity cannot in any case be less than the cost of the first establishment of the existing works, as shown by the accounts, deduction, however, being made for amount of the funds for repairs and reserve funds. In estimating the cost of construction and the net proceeds, the railway enterprise conceded by this present act will alone be taken into consideration, to the exclusion of any branch line that may be joined to it.

D. The net proceeds consist of the amount of the receipt over and above the cost of operating the road. In the last all sums are included carried to the account of operating the road or placed in the reserved fund.

E. In the case of the repurchase at the expiration of the concession, the purchaser may either reimburse the amount of the original cost of the line, or may demand that the indemnity to be paid be fixed by an estimate of the federal tribunal.

F. Differences which may arise upon the subject of the repurchase are to be determined by the federal tribunal.

28. In case the canton of Berne shall have effected the repurchase of the road, the confederation may, nevertheless, at any time avail itself of its right to repurchase, as defined in Article 27, and the canton of Berne is bound to cede the line to the confederation, with the same rights and obligations which were ceded to it by the company.

29. The federal council is charged with the execution of the prescriptions of the present concession, which will go into force from the day of its promulgation.

XXXII.—TURKISH EMPIRE.

1.—OTTOMAN PORTE.

No. 451.

Mr. Boker to Mr. Fish.

[Extract.]

No. 55.]

LEGATION OF THE UNITED STATES,
Constantinople, October 1, 1872. (Received October 24.)

SIR: At the request of the Egyptian government I have the honor to present to the consideration of the Department of State a scheme of law intended to be introduced into Egypt if the consent of the great powers to the project can be obtained. I also inclose an explanatory circular letter from the Egyptian government.

It seems to be unjust that there should be any hesitation to permit the Egyptians to take that first step towards self-government which will be the result of an independent judiciary—an institution which forms the basis of human freedom in all civilized countries, and which assures to the citizens liberty and equality in precise proportion to the perfection of their legal systems.

Though all the foreign ministers at Constantinople are in favor of permitting the Egyptians to try their judicial experiment under the inspection of the great powers, and with the reservation that it shall not be persevered in if, at the end of five years, it be found to fail on our own verdict, nevertheless the French government is at present the chief obstacle in the way of the attempt. * * *

My opinion, however, is that, sooner or later, all the great powers will agree to permit the Egyptian government to put its legal project into practice, to the great future benefit of a thriving and friendly country, which has so long been restrained in its just political aspirations by the irresistible external pressure of foreign nations. Egypt is in a way to be coddled to death, or to lose everything like national character by the over-solicitous nursing of her two affectionate friends. The Suez Canal has become another bond of closer union and of increased care, and the great powers vie with one another, and amicably wrangle over their *protégé*, in order to induce her to adopt every policy that may be imposed rather than one which she may evolve from her own consciousness of her political and her domestic needs.

It should be a source of sincere satisfaction to us if the Government of the United States may be the first to recognize the justice of the Egyptian project, and to sanction so far as we may the trial of the system on the terms laid down in the inclosed protocol. Our example would have great influence in bringing about a successful issue to the negotiations with the other great powers. As the matter now stands it is promised that Italy will shortly agree to the proposition; England is favorable, but awaits the action of the other powers; Russia will give in her adhesion as soon as she is satisfied as to what the others will do; Germany and Austria will follow the lead of Russia; France will probably hang back until the last; and as to the opinions or the actions of the smaller powers, they are of no importance, as the system will go into operation as soon as the consent of the great powers can be settled.

At the meeting of the diplomatic representatives of all the powers, at which the Egyptian minister of foreign affairs produced the protocol, human ingenuity was exhausted in objections, observations, and proposed amendments to the document. All of these, Nubar Pacha explained, embodied and accepted as the protocol will show. When nothing further could be imagined and Nubar Pacha had agreed to everything, he was told that the meeting must receive the protocol, as thus altered to suit itself, with reserve, and that he must await the instructions of the various governments represented. The Egyptian government has been at work upon this purpose for five years, seeking advice and negotiating with every court in Europe. Having perfected the plan according to European ideas, it seems hard that it should fall to the ground because of the indifference, the inaction, or the jealousy of the powers whose advice has been had at every step of the proceeding, but whose accredited representatives seem never ready to speak in the name of their several governments. I therefore recommend that the Government of the United States should be the first to do simple justice toward our ancient ally.

I have, &c.,

GEORGE H. BOKER.

[Inclosure 1.—Translation.]

The commission assembled in Cairo, in 1869, has been of the opinion that the reform of civil justice and the reform of penal justice should be introduced at the same time, and that penal jurisdiction should go into effect after one year of experience by the tribunals in civil and commercial matters.

The government, without concealing from itself the great conflicts which would inevitably arise between two kinds of jurisdictions of different characters, agrees in opinion with the British commissioners, from whom the proposition emanated, that a fixed and short interval should be settled upon, at the expiration of which the new tribunals should enter on their duties in civil matters.

However, it insists that the criminal jurisdiction be immediately exercised for the repression of all crimes and offenses which necessarily belong to the functions of the new tribunals, because the impunity or the punishment of such crimes by a foreign authority would evidently endanger the fair administration of justice by these tribunals.

So it is not admissible that other tribunals be called on to pursue and repress the offenses committed on the occasion of the execution of judgments, or against the officers of such tribunals acting in the exercise of their functions.

How could the tribunals assure the execution of their judgments if they were disarmed toward those who might oppose violence to these executions, or embezzle the property attached in virtue of these judgments?

How shall justice be respected, how shall its action be usefully secured, if, on the occasion of these offenses, another authority be called on to judge of the validity of the acts of execution and the scope of the judgments themselves?

It can be said with as much, with perhaps more reason, of offenses committed in court toward the magistrates, or beyond the court toward officers performing their duties.

What respect would the judges inspire if it were necessary that another jurisdiction should examine and determine the gravity of the offense which they received; and without wishing to criticise the consular justice, it is certain that there cannot be imagined a more painful situation than that of a tribunal insulted in its very court, that finds itself powerless to repress the outrage.

It is evident also that there must immediately be conceded to the new jurisdiction the cognizance of the crimes and offenses imputed to the magistrates themselves, and to the officers of justice, where it is charged that these crimes and offenses have been committed by them in their characters of magistrates or officers of justice.

What idea would parties to a suit have of the dignity of the tribunal, and what idea would the tribunal have of itself, if the acts of each of its members could be denounced on the complaint of any one to a repressive and foreign jurisdiction with power, even on appeal, to transfer the trial to a foreign country?

In short, it is of absolute necessity for the perfect operation of the new tribunals, and for the security of the rights which are committed to them, that a foreign authority shall never be called upon to interpose in their acts, and that they shall find within themselves the means to secure their liberty, their dignity, and the execution of their decisions.

The government thinks then that it should insist, even while postponing for a year the jurisdiction of the tribunals in criminal offenses, that it shall be agreed that the new tribunals shall be competent to decide not only, as is intended, in mere civil cases, but also on crimes and offenses committed on the occasion of the execution of judgments and orders of court, or against the officers of the tribunals enforcing these executions.

They should also have jurisdiction over all crimes and offenses which may be committed at the trial of a case, or against the magistrates and the officers or the agents of the tribunal exercising their functions on the occasion, as well as over those crimes and offenses which may be imputed to the magistrates and officers in their official capacity.

[Inclosure 2.—Translation.]

Project of judiciary organization for the mixed processes in Egypt.—Observations made by their excellencies the ambassadors and chief of legations, at the meeting of the 7th August, 1872, and accepted by Nubar Pacha. Text of the project elaborated by the international commission, amended and approved by the Sublime Porte.

I. There shall be instituted three tribunals of first instance, at Alexandria, at Cairo, at Zagozig or at Ismalia.

II. These tribunals shall hear all disputes in civil and commercial matters between natives and foreigners, and between foreigners of different nationalities.

III. The government, the administration, the dairas of His Highness the Khedive, and of the members of his family, shall be judicable by these tribunals, in processes with foreign subjects.

IV. These tribunals, without being able to decide on the property of the public domain, nor interpret or hinder the execution of an administrative measure, may judge in the cases provided by the civil code, touching the rights of foreigners which may be infringed upon by any administrative act.

V. There shall not be submitted to these tribunals the demands of foreigners against religious establishments, regarding claims on the real estate possessed by these establishments.

VI. The sole fact that real estate has been given as security for debt to a foreigner shall empower these tribunals to decide on all consequences of the hypothecation, extending so far and including the forced sale of the property and the distribution of the proceeds.

Observations.—The magistrate who *de facto* will direct the pleadings shall be designated by the absolute majority of the European and native members of the tribunal.

VII. *Text.*—Each of these tribunals shall be composed of five judges, three Europeans and two natives; one of the European judges shall preside, with the title of vice-president. In commercial affairs, the tribunals shall add two mercantile assessors, one native and one foreign, to be chosen by election.

VIII. There shall be at Alexandria a court of appeals, and a court of revision, the latter having power to revise the decisions of the former, touching a reversal of a judgment made by a court of first instance. Pending this revision, judgment shall be suspended.

IX. Each of these courts shall be composed of seven judges, four Europeans and three natives; and one of the European judges shall preside with the title of vice-president.

Observations.—The court of appeals shall be composed of eleven magistrates, four natives and seven foreigners; but decisions of the court of appeals may be made by eight magistrates, including the president, five foreigners and three natives.

Additional articles.—The right of peremptory challenge of the magistrates, of the interpreters, and the written translations shall be reserved for all the parties.

The tribunals shall delegate one of the magistrates who, acting as a judge of peace, shall endeavor to conciliate parties, and to decide on affairs of such importance as may be fixed by the court of procedure.

Text.—X. The trials shall be public and the pleadings free. Persons having the diplomas of lawyers will be admitted to represent and defend the parties before the courts and tribunals.

XI. The nomination and the choice of the judges will belong to the Egyptian government, but in order to insure itself of the guarantees which may be presented by the persons whom it may select, it will address itself to the ministers of justice in Europe, and will engage only those who have received the consent and authority of their respective governments.

XII. The promotion of the magistrates, and their transfer from one tribunal to another, shall take place on the proposal of the body of magistrates.

XIII. The magistrates who shall compose these courts and tribunals shall not be removable.

Observations.—This non-removability shall last but during five years. The magistrates shall not be definitively admitted until the term of probation be passed.

XIV. *Text.*—The code of procedure will declare whether offending magistrates shall be submitted to a jury or to the tribunals for the investigation of facts implicating their delicacy and probity.

XV. The magistrates shall receive no honorary distinctions from the Egyptian government.

XVI. There shall be in every tribunal a clerk and several sworn assistant clerks, who may act in the clerk's absence.

XVII. There shall be also in each court and each tribunal sworn interpreters in sufficient number, and the necessary body of officers, who shall have charge of the conduct of the trials, of the signification of the writings, and of the execution of the judgments.

XVIII. The clerks, officers, and interpreters shall be at first nominated by the government, but their commissions may be revoked by the tribunals to which they are attached.

XIX. The functions of magistrates, clerks of courts, assistant clerks, interpreters, and officers shall be incompatible with any other salaried office and with the business of merchants.

XX. A parquet (bar) shall be instituted, at the head of which shall be an attorney-general. The attorney-general shall have under his direction, at the courts and tribunals, substitutes in sufficient number for the conduct of trials, and the judiciary police. The procureur-general shall sit at all the criminal courts, and at all general

assemblies of the courts and tribunals. The procureur-general and his substitutes shall be removable, and they shall be nominated by the Khedive.

XXI. The execution of judgment shall take place without any consular or other administrative action, and on the order of the tribunals. They shall be executed by the officers of the tribunals, with the assistance of the local authority, if this assistance shall become necessary, but always without any administrative interference. But the officers of justice who are charged with the execution by the tribunals shall be obliged to inform the consulates of the day and hour of the execution, and that under pain of the annulling of the execution and damages against the officers. The consul so informed may be present at the execution, but in case of his absence the execution shall proceed.

XXII. The aforesaid courts and tribunals shall have also correctional and criminal jurisdiction over offenses committed by foreigners, over crimes and offenses committed by foreigners against the state, against natives, and against foreigners of different nationalities.

XXIII. This jurisdiction shall be exercised in conformity with the provisions of the code of criminal examinations and the penal code which will be published.

Additional articles.

Tribunals in civil matters shall not begin their cognizance of mixed cases until one month after their establishment.

The cases already commenced before the foreign consulates at the establishment of the tribunals shall be continued before the consulates until their final settlement.

In penal matters, the new tribunals shall take cognizance of simple police offenses, as well as of crimes and offenses committed against magistrates and officers of justice in the performance of their duties, and of those which may be imputed to them in their quality of magistrates or officers of justice.

Eighteen months after their establishment, and for the remainder of the current time of the provisory period, the tribunals shall have penal jurisdiction over all crimes and offenses committed by foreigners against natives, by natives against foreigners, or by one foreigner against another foreigner of different nationality, as well as over all crimes or offenses committed against the public security and good morals.

The hearings in penal matters shall take place without any sort of administrative, consular, or governmental interference.

If the hearing should end in a prosecution, the papers of the hearing shall be communicated to the consul of the accused, on his demand.

In mixed cases, when the case shall be a civil suit, the jury shall be composed of equal numbers of Europeans and natives, and selected by ballot from a list which shall be prepared beforehand.

The penalties shall be inflicted in Alexandria or Cairo. Until it shall be proved that sufficient places of detention have been established in Egypt, the accused shall be confined in the consular jails.

In case of condemnation to capital punishment, the embassies shall have the privilege of claiming their citizens, so as to transfer him to his country for the infliction of the penalty. To accomplish which, a sufficient delay shall intervene between the day of the judgment and the execution of the sentence, in order to give the embassies and the legations time to make their claims.

During the period of eighteen months, fixed heretofore, the government shall make public any observations which it may desire to make on the code of criminal jurisdiction.

During the period of five years, no change shall take place in the established system. After this period, if experience have not confirmed the practical usefulness of the reform of the judiciary, it shall be allowable to the foreign powers either to go back again to the former order of things, or to come to an understanding with the Egyptian government for other arrangements.

No. 452.

Mr. Boker to Mr. Fish.

[Extract.]

No. 58.]

LEGATION OF THE UNITED STATES,
Constantinople, October 20, 1872. (Received Nov. 14.)

SIR: I have the honor to say that during the night of the 18th of this month the seals of office were withdrawn from Midhat Pacha, and

Mehemet Rushdi Pacha was appointed grand vizier in the place of the former. * * * *

The present grand vizier, Mehemet Rushdi Pacha, is a man of high character and intelligence, who once before filled the office of grand vizier, and who enjoys universal respect and confidence. He is a man who neither seeks nor seems to desire the cares of office, and his ministry is therefore looked upon as transitionary, and to be followed by the appointment of some more ambitious pacha, perhaps by the return to power of the ex-grand vizier Mahmoud Pacha. The latter is said to be in high favor at the palace, and it is rumored that a portfolio in the present cabinet will be offered to him. It is not supposed that the change of grand vizier will produce any serious modifications in the former policy of the government, which may be characterized as a drifting one, with no other underlying principles than a blind trust in Providence, and a belief that a majority of the great powers of Europe recognize, as a necessity of their own peace, the continuance of the stability of the Ottoman Empire.

Notwithstanding this general tendency in Turkish policy, the meeting of the three Emperors at Berlin has produced a disquieting influence in Constantinople. * * * *

It is said that they [the Turks] are fortifying Sinope, converting their arms into breech-loaders, and there is unusual activity in the manufacture of ammunition. At present it is impossible to say whether these preparations will have a serious issue, or whether they are merely one of those spasmodic armings so common among the nations of Europe, to be followed by no consequences save by an equally unaccountable disarming, after the spectral apprehension has passed away. It is thought that the presence of the new minister of Germany, whose arrival is daily expected, will solve all doubts, by showing whether Germany means to take part for or against the traditional designs of Russia toward the Ottoman Empire.

The Department is doubtless aware of the sudden death of Djemil Pacha, the minister of foreign affairs, before he had been a month in office, and the appointment in his place of Halil Pacha, formerly Ottoman minister at Vienna. Halil Pacha bears a high character for intelligence, business capacity, and enlightenment, while his European education naturally inclines him to belong to the progressive party of his countrymen. He is said to be strongly anti-Russian and anti-Egyptian in his tendencies. The latter inclination will not be weakened by his approaching marriage with the daughter of Mustapha Fazyl Pacha, the brother of the viceroy of Egypt, between whom and the Khedive there is no love lost.

* * * * *
I have, &c.,

GEORGE H. BOKER.

No. 453.

Mr. Boker to Mr Fish.

No. 68.]

LEGATION OF THE UNITED STATES,

Constantinople, November 30, 1872. (Rec'd Jan. 2, 1873.)

SIR: I have the honor to acknowledge the receipt from the Department of State of a dispatch numbered 58.

* * * * *

To-day, as Captain Rhind informed me, by telegraph, he sailed for Beirut, where the presence of a national vessel is really needed, because of the threats made against the American colony of that place by the friends of certain rioters who, some months ago, were severely dealt with for their destruction of the property of the American Medical College, of Beirut, and their unprovoked attack on the workmen engaged upon the building. The odium incurred for the execution of the rigorous sentences against the rioters was justly attributed by their families to the firmness of this legation, and ever since the lawless populace of Beirut, as I have been informed by the consul-general, has been lying in wait to avenge itself upon the persons of the American citizens residing in that half-governed city. The presence of the Congress in the harbor will therefore have a salutary influence upon the Syrians, and I beg to suggest, that from time to time, our national vessels be instructed to look in at Beirut until the present excitement shall blow over.

I have, &c.,

GEORGE H. BOKER.

No. 454.

Mr. Boker to Mr. Fish.

No. 81.]

LEGATION OF THE UNITED STATES,
Constantinople, March 18, 1873. (Received April 9.)

SIR: I have the honor to say, in reply to dispatch No. 75, from the Department of State, under date of February 10, 1873, instructing me to make inquiries as to the alleged practice of conveying slaves in British vessels between Tripoli and Malta, and thence to Constantinople, that I have had an interview with the British ambassador, Sir Henry Elliot, on that subject, and with the following result:

Sir Henry Elliot admitted that slaves had been carried in British steamers from Tripoli, via Malta, to Constantinople, but that this had been done in spite of the vigilance of the authorities at Malta rather than by their connivance. In all cases where it had been suspected that slaves were on board a vessel, the ship had been searched, and if any slaves had been found they were at once set free. This has always been the practice, though of late the British government has taken the authorities of Malta to task for having relaxed in zeal, and has issued stringent orders that will probably prove effective in suppressing the illegal transportation of slaves. If anything further be needed, further measures will be adopted to meet the case.

The officers of British steamers can hardly be held as greatly culpable for having carried slaves from port to port upon the crowded deck of a Mediterranean steamer. Where people are packed almost solidly together, where third and fourth class passengers take up positions upon embarking from which they scarcely stir until the voyage is over, it is almost impossible to discriminate in the condition of men. When slaves have been brought aboard a ship at Tripoli, they have always been presented as the dealer's servants, traveling with their master. They never appear with the traditional clout about their loins and a hoe in their hands, but clad for deception in fine clothes that are worn for the occasion; and as they speak no European language, and are always under the jealous eye of their owner, they have neither the

means nor the opportunity to appeal to the ubiquitous British philanthropist. This much may be said by way of apology for the well-founded scandal that, from time to time, slaves have been carried about in British vessels.

Too much praise cannot be given to the Turkish government for the rigorous way in which they have endeavored to suppress the transportation of slaves within Turkish waters. Upon the arrival of every ship that may contain slaves at Constantinople, she is thoroughly searched by the *zapties*, and every man who is suspected of being held in slavery is at once set at liberty, and provided with papers of manumission. This is sometimes done even against the will of the dependent creatures, who are thus subjected to a new if legal form of slavery, which they in their blindness hold to be worse than their former state.

The foregoing remarks apply only to the rude and coarse slavery of men. As to the more refined and elegant slavery of the harem, that is a luxury in whose suppression no man or law has yet dared to engage. What would be said of even a sturdy British sailor who dared to refuse to transport the harem of a Turk—wife, slaves, eunuchs, and all—it is vain to conjecture. So far that sacred institution voyages as it lists, and in whatever bottoms it may elect, and woe to the presuming *giaour* who should say it nay! In illustration of the danger of dealing with this very peculiar domestic institution, the following adventure befell Sir Henry Elliot a short time ago: He was informed that, in a certain part of the city, there had been gathered together a number of female Circassian slaves, and that the poor wretches were about to be shipped off to Egypt, torn from their families, homes, affections, &c., much against their wills. Sir Henry was appealed to, in the name of humanity, to prevent the atrocity. Filled with righteous zeal, he sought and found the unfortunate females. The story that had moved him he found to be true to the letter. There were the cowering slaves of our mother's sex, and they were about to be shipped to Alexandria. So far the case looked perfect for the intervention of the most pugnacious philanthropy. But what was the account that the gentle oppressed creatures gave of their own feelings and sufferings when thus free to speak in the august presence of the British ambassador? Their words were to this effect: "Yes, we are slaves, and we wish to be slaves; and we wish to go to Cairo because we are unhappy at home; and we further wish that Her Britannic Majesty's ambassador would mind his own business!" I need not say that the negotiation ended without so much as the signing of a protocol between the high contracting parties.

The above incident terminated my interview with Sir Henry Elliot on the subject of the transportation of slaves in British ships trading between Tripoli, via Malta, and Constantinople, the substance of which conversation I have endeavored to report faithfully.

I have, &c.,

GEORGE H. BOKER.

No. 455.

Mr. Boker to Mr. Fish.

[Extract.]

No. 83.]

LEGATION OF THE UNITED STATES,
Constantinople, March 20, 1873. (Received April 15.)

SIR: I have the honor to acknowledge the receipt from the Department of State of printed circular No. 33, the contents of which I shal

immediately communicate to the United States consul-general at Constantinople.

Since my return to Constantinople, the following changes have taken place in the Turkish cabinet:

Khalil Sherif Pacha has been dismissed from the office of minister of foreign affairs, and in his place Safuet Pacha, ex-minister of justice, has been appointed. Safuet Pacha held his present office for a short time during last summer, and it was with him that I held the luminous conversation regarding the persecution of the Jews in Roumania, as narrated in my dispatch No. 43.

Midhat Pacha, ex-grand vizier, has been appointed minister of justice. This gentleman was thought to have made a signal failure as grand vizier during his brief tenure of office, to which, however, it is not improbable he may soon be recalled.

* * * * *

Rashid Pacha, ex-governor general of Syria and afterwards of Bosnia, has been appointed minister of public works in the place of Ismail Pacha, who has been returned to the council of state.

The above-mentioned changes in the ministry have no political importance. They signify nothing that is not included within the adage concerning the mutability of human affairs.

I have, &c.,

GEORGE H. BOKER.

No. 456.

Mr. Boker to Mr. Fish.

No. 91.]

LEGATION OF THE UNITED STATES,
Constantinople, April 4, 1873. (Received April 24.)

SIR: I have the honor to acknowledge the receipt from the Department of State of dispatch No. 81, under date of March 14, 1873, addressed to Mr. Goodenow.

The question of judicial reform in Egypt has reached a point at which a further report from me may seem desirable to the Department. Italy, Sweden and Norway, and Belgium have given in their adhesion to the plan. There is little doubt that Great Britain will soon follow, as I have been so assured by the ambassador of that power. The German government has agreed, subject to its consent being ratified by the Reichstag, as the modification of the provisions of a treaty will be necessary, it is thought, before a full authorization can be given. The relation of the German government to the Reichstag resembles that of our Executive Department to the Senate, whenever the consideration of a treaty is involved. In view of the difficulty of modifying the treaty which we possess with Turkey, I would suggest the following plan: Let the treaty remain untouched; let no modification of its provisions be attempted. Instead of that, let the Senate pass a resolution that such provisions of the treaty as interfere with the establishment of judicial reform in Egypt be suspended, in that province of the empire only, for the period of five years. This will enable the Egyptians to

try their judicial experiment, will not affect the permanence of the treaty, and will receive the assent of the Sublime Porte, that, as is well understood, favors a trial of the Egyptian scheme.

It will be well, perhaps, to examine how far the project of judicial reform will affect the provisions of the treaty. In ordinary criminal matters there will be no change whatever. An offending American will still be tried by his consul-general. The only criminal jurisdiction claimed by the proposed courts will be in case an offense shall be committed by a foreigner against the judges or against the officers of the courts in the performance of their legal duties; and this jurisdiction over foreigners, it is obvious, will be necessary in order to enforce respect toward the new tribunals.

Questions between a foreigner and a native, involving property, will be tried, as at present is provided by the treaty, before a native court; only, instead of the consular dragoman being present to represent the interests of his countrymen, the cause will be tried before a bench of judges, the majority of whom will be foreigners. This I look upon as an improvement in the procedure, and as an additional safeguard for the rights of a foreigner; because the consular dragomans are generally illiterate men, and in many cases they are natives of Egypt, and therefore open to agnatic corruption.

Sentences against foreigners will not be handed to the consuls for execution. This duty will be performed by officers of the courts, but the consul in all cases will be notified to be present. The same notice will be given to the consul in case the officers of a court, bearing a warrant from that court, and only when thus provided, shall enter the house of a foreigner in the execution of their legal duties.

It will thus be seen that the existing treaty will be affected but in three points: in the presence of the consular dragoman, as a *quasi* official, in suits between foreigners and natives before a native court; in the duty of executing judgments being withdrawn from the consul-general; and in the right which the officers of native courts, when armed with a warrant, will have to enter the house of a foreigner, after his consul shall have been duly notified of their intention.

There seems to be little real danger in conceding to the Egyptians the privilege of trying their system, since, as they well know, should it prove a failure in practice, the strong hand of the great powers will be laid upon it, and the old order of things will be re-established, long before the probational five years, or any considerable part of them, shall have elapsed.

I have, &c.,

GEO. H. BOKER.

No. 457.

Mr. Boker to Mr. Fish.

No. 93.]

LEGATION OF THE UNITED STATES,
Constantinople, April 14, 1873. (Received May 3.)

SIR: I have the honor to report that, owing to the increasing scarcity of Arab horses in certain parts of the Ottoman empire, the Sublime Porte, by a decree, communicated April 9, 1873, has forbidden the exportation of horses of all breeds from the vilayets of Bagdad, of Syria,

and of Aleppo, for the next seven years, dating from the day of the promulgation of the order.

On account of the late bad harvests, and consequent suffering for want of food in the Black Sea provinces of the empire, the Sublime Porte has issued a decree, which was communicated April 12, 1873, interdicting the exportation of all kinds of cereals from the districts of Rous-tchouk and of Vidin for the next three months, beginning from the above date.

As the above regulations may be of interest to some of the citizens of the United States, the Sublime Porte requests that the decrees may be given publicity in our country.

I have, &c.,

GEORGE H. BOKER.

No. 458.

Mr. Boker to Mr. Fish.

[Extract.]

No. 94.]

LEGATION OF THE UNITED STATES,
Constantinople, April 15, 1873. (Received May 9.)

SIR: I have the honor to acknowledge the receipt of your dispatch No. 83, under date of March 28, 1873.

To-day the city was excited by the intelligence that the grand vizier, Essad Pacha, who has held office for just two months, had been superseded by Mehmed-Rushdi Pacha, who until then had been minister of finance. No reasons are assigned for this unexpected change of ministers, which it would be as difficult to account for as it would be to predict what and how soon will be the next.

It would perhaps be unjust to attribute the many changes which within a short time have taken place in the government to mere caprice on the part of the Sultan. I, as one who have had unusual opportunities of estimating His Majesty, think too highly of his intelligence to refer his conduct to so slight a cause. I believe that he is seeking among his pachas for one who has the ability and the resolution to carry out a policy already laid down by His Majesty, and that the cumbersome form of Ottoman government, and the traditional abuses which have hardened into customs, almost prevent the possibility of reform or of alteration. No man can be a successful autocrat at second-hand; and * * * he may try long and in vain to find a substitute to perform to his satisfaction duties which he should assume as his own—duties of whose good or ill performance he is shrewd enough to judge justly, but from active participation in which he is debarred by his sacred function as caliph. There is no country in Europe where the curse brought upon the government by the union of church and state is so visible as in Turkey, now that the Pope has lost his secular kingdom; for here, as it was in the case of the latter, the union is in a single person, and therefore the vices of the combination are the more evident and unavoidable. Here, too, as formerly at Rome, we see the same kind of weakness, sapping the foundation of the state,

impoverishing the treasury and the credit, degrading and enslaving the people, and finally making the whole system at once ridiculous and odious in the sight of rational governments.

* * * * *

I have, &c.,

GEORGE H. BOKER.

No. 459.

Mr. Boker to Mr. Fish.

No. 96.]

LEGATION OF THE UNITED STATES,
Constantinople, April 19, 1873. (Received May 12.)

SIR: I have the honor to say that a protocol has recently been signed between the Sublime Porte and certain European powers, which secures to the province of Tripoli, in Africa, the same judicial privileges which, under the capitulations, have heretofore been enjoyed by the European and the Asiatic provinces of the Ottoman empire.

So far the protocol has been signed by the only European powers that have any considerable commercial interests or important consular establishments in Tripoli of Africa, but I understand the other powers will raise no objections should their assent be requested.

I herewith inclose a copy and a translation of the protocol, and I respectfully request instructions from the Department to meet the probable case of my being applied to by the Sublime Porte to sign a similar agreement on the part of the United States.

I have, &c.,

GEORGE H. BOKER.

[Translation.]

PROTOCOL.

The Sublime Porte, having addressed the governments of France, Great Britain, and Italy to express the desire that in the province of Tripoli, of Africa, the competence of the local tribunals, in causes between natives and foreigners of French, English, and Italian extraction, shall be established upon the same basis as in the provinces of the Ottoman Empire in Europe and Asia, the said governments, after having agreed severally to this wish, have resolved to confirm their consent by a joint act.

The undersigned, having been duly authorized, have agreed in consequence to the following stipulations:

ARTICLE I. The consuls of France, England, and Italy, in Tripoli, of Africa, shall receive precise and formal orders from their governments, so that henceforth all processes and differences between natives and the subjects of France, England, and Italy, in this province, whatever may be the nationality of the defendant, shall be adjudicated according to the terms of the capitulations in force, and in the same manner as the capitulations are applied in the European and the Asiatic provinces of the Ottoman Empire.

ARTICLE II. The Sublime Porte engages to treat the consuls and the subjects of England, France, and Italy at Tripoli, of Africa, in the matter of consular jurisdiction, upon the footing of the most favored nations, and to enable them to participate in the enjoyment of all favors or advantages accorded in this respect to the consuls and the subjects of any other state.

Done at the Sublime Porte the $\frac{1}{2}$ ²⁴th February, 1873.

KHALIL.
HENRY ELLIOT.
M. VOQUÉ.
U. BARBOLANI.

No. 460.

Mr. Boker to Mr. Fish.

No. 98.]

LEGATION OF THE UNITED STATES,
Constantinople, April 21, 1873. (Received May 12.)

SIR: I have the honor herewith to transmit a copy of the regulations for the organization of the new courts of law proposed to be established in Egypt, as settled by the commission lately in session at Constantinople, together with a translation of the same.

I have, &c.,

GEORGE H. BOKER.

TITLE I.

Jurisdiction in civil and commercial matters.

CHAPTER I.

*Tribunal of first instance and court of appeal.**Section I.—Institution and composition.*

ARTICLE I. There will be instituted three tribunals of first instance, at Alexandria, at Cairo, and at Zagazig.

ARTICLE II. Each of these tribunals shall be composed of seven judges, four foreigners and three natives. Judgments shall be given by five judges, three foreigners and two natives. One of the foreign judges shall preside, with the title of vice-president, and shall be designated by the absolute majority of the foreign and native members of the tribunals. In commercial affairs the tribunal shall add two mercantile assessors, one native and one foreigner, having a deliberative vote, to be chosen by election.

ARTICLE III. There shall be at Alexandria a court of appeal, composed of eleven judges, four natives and seven foreigners. One of the foreign judges shall preside, with the title of vice-president, and shall be chosen in the same way as the vice-president of the tribunals. The decisions of the court of appeal may be made by eight merchants, five foreigners and three natives.

ARTICLE IV. The number of the judges of the court of appeal and of the tribunals shall be increased, if in the opinion of the court the necessity of the service requires it, without altering the fixed proportion between the native and the foreign judges. Meanwhile, in case of absence or impediment on the part of several judges at once from the court of appeal, or of the same tribunal, the president of the court may supply the deficiency; if they are foreigners, by their colleagues from the other tribunals, or by the foreign judges of the court of appeal. When one of the judges of the court shall be so designated to intervene in the audiences of one of the tribunals, he shall have the presidency.

ARTICLE V. The nomination and the choice of the judges will belong to the Egyptian government, but, in order to be sure of the guarantees which may be presented by the persons whom it may select, it will apply officiously to the ministers of justice abroad, and will engage only those who are furnished by the consent and the authorization of their respective governments.

ARTICLE VI. There shall be in the court of appeal and in every tribunal, a greffier and several sworn assistant greffiers, who may act in the greffier's absence.

ARTICLE VII. There shall be also in each court and tribunal sworn interpreters in sufficient numbers, and the necessary body of officers, who will be charged with the conduct of the trials, of the signification of the writings, and of the execution of the judgments.

ARTICLE VIII. The greffiers, officers, and interpreters will be at first nominated by the government, and as to the greffiers they shall be chosen for the first time abroad, among the ministerial officers who perform or have performed, or among the persons able to perform the same functions abroad.

Section II.—Competence.

ARTICLE IX. These tribunals will judge alone all contentions in civil and commercial matters between natives and foreigners of different nationality, as well as all questions of real estates between any person, even if they belong to the same nationality.

ARTICLE X. The government, the administrations, the dairas of His Highness the Khedive, and the members of his family, will be triable before these tribunals in processes with foreign subjects.

ARTICLE XI. These tribunals, without being able to decide on the property of the public dominions, or interpret, nor hinder the execution of an administrative measure, may judge, in the cases provided by the civil law, the prejudices which are caused to the rights of a foreigner by any administrative act.

ARTICLE XII. There shall not be submitted to these tribunals the demands of foreigners against religious establishments regarding claims of real estate possessed by these establishments; but they shall be competent to judge on claims made on the question of legal possession, no matter who the claimant or the defendant may be.

ARTICLE XIII. The sole fact that the real estate has been given as security for debt to a foreigner shall empower these tribunals to decide on all the consequences of the hypothecation existing, so far and including the forced sale of the property and the distribution of the prices.

ARTICLE XIV. The tribunals shall delegate one of the judges, who, acting as a judge of peace, shall endeavor to conciliate parties, and to decide on affairs of such importance as may be fixed by the law of procedure.

Section III.—Audiences.

ARTICLE XV. The trials shall be public, except cases in which the tribunal, by a decision explaining the reasons, shall order the *huis-clos* in the interests of morality and public order, the defense shall be free.

ARTICLE XVI. The judiciary languages employed before the tribunals for the pleadings, and of the acts and the sentences, shall be the languages of the country, the Italian and the French.

ARTICLE XVII. Only persons having the diploma of lawyer will be admitted to defend the parties before the court of appeals.

Section IV.—Execution of judgments.

ARTICLE XVIII.—The execution of judgments shall take place without any administrative, consular, or other action, and on the order of the tribunal. It shall be effected by the officers of the tribunals, with the assistance of the local authority, if this assistance becomes necessary; but always without any administrative interference.

But the officer of justice charged with the execution of sentences by the tribunals shall be obliged to inform the consulate of the day and hour of the execution, and that under pain of the annulling of the execution and damages against the officers.

The consul so informed may be present at the execution, but in case of his absence the execution will proceed.

Section V.—Irremovability of the judges.—Promotion.—Incompatibility.—Discipline.

ARTICLE XIX. The magistrates who will compose the court of appeal and the tribunals shall not be removable. This non-removability shall last only during five years. Magistrates shall not be definitively admitted until the term of probation is passed.

ARTICLE XX. The promotion of the magistrates, on their passage from one tribunal to another, shall take place only by their consent, and on the proposal of the court of appeal, which will take the advice of the interested tribunals.

ARTICLE XXI. The functions of magistrates, greffiers, assistant greffiers, interpreters, and officers shall be incompatible with any other salaried office and with the business of the merchant.

ARTICLE XXII. The magistrates shall receive no honorary or material distinction from the Egyptian government.

ARTICLE XXIII. All the judges of the same category shall receive the same salary. The acceptance of any remuneration besides their salary, of an increase of salaries, valuable gifts, or of any other material advantages, will involve for the judges the forfeiture of the employment and of the salary, without any right to indemnity.

ARTICLE XXIV. The discipline of the magistrates, officers of justice, and the lawyers is reserved to the court of appeals. The disciplinary penalty applicable to the magistrates for facts compromising their honesty as magistrates, or the independence of their vote, shall be the revocation and the loss of their salary, without any right to indemnity.

The penalty applicable to the lawyers compromising their honesty shall be the exclusion from the list of lawyers admitted to plead before the court, and the judgment shall be given by the court in general meeting by a majority of the three-quarters of the judges.

ARTICLE XXV. Any complaint presented to the government by one of the members of the consular body against the judges for disciplinary reasons shall be referred to the court, which will be bound to examine the question.

CHAPTER II.

Section VI.—Parquet, (bar.)

ARTICLE XXVI.—A parquet shall be instituted, at the head of which shall be an attorney-general.

ARTICLE XXVII. The attorney-general shall have under his direction, at the court of appeals and at the tribunals, substitutes in sufficient number for the conduct of trials and the judiciary police.

ARTICLE XXVIII. The attorney-general will be permitted to be present at all the sessions of the court and the tribunals, at all the criminal courts, and at all the general assemblies of the courts and the tribunals.

ARTICLE XXIX. The attorney-general and his substitutes will be removable and they shall be appointed by His Highness the Khedive.

Section VI.—Special and transitory dispositions.

ARTICLE XXX. The right of peremptory challenge of the magistrates and of the interpreters and the written translations shall be reserved for all the parties.

ARTICLE XXXI. There will be in every record-office of the tribunal of first instance a clerk of the mehkémé, (Turkish court,) who will assist the greffier in the conveyance acts of real estate, and of the creation of rights and privileges concerning real estate, and he will draw up the act and transmit it to the mehkémé.

ARTICLE XXXII. There will be also at the mehkémé clerks delegated by the greffier of the tribunal of first instance, who shall transmit to him, in order to be recorded in the office of the recorder of mortgages, the acts of conveyance of real property, and of the creation of mortgage upon real estate. These transmissions shall be made under the penalty of damages and interest, and of disciplinary prosecution. The omission shall not involve nullity.

ARTICLE XXXIII. The conventions, donations, and the acts constituting mortgage or conveyance of real property received by the greffier of the tribunal of first instance will be considered authentic acts, and their original shall be deposited in the archives of the record-office.

ARTICLE XXXIV. The new tribunals in the exercise of their jurisdiction in civil and commercial matters, and in the limits conceded to them in penal matters, shall apply to laws presented by Egypt to the powers; and in case of silence, insufficiency, and obscurity of the law, the judge shall conform to the principles of natural rights and to the rights of equity.

ARTICLE XXXV. The government will cause the laws to be published a month before the new tribunals assemble, an example of which, in each of the judicial languages, shall be deposited in each mudirich, at every consulate, and at each record-office of the court of appeals, and of the tribunals, which will always keep a copy of them.

ARTICLE XXXVI. It will likewise publish the law relating to the personal statutes of the natives, a tariff of the judicial fees, the regulation as to land-dikes and canals.

ARTICLE XXXVII. The court will propose the general judicial regulations as to the police of the trials, the discipline of the tribunals, of the officers of justice, of the lawyers, and the duties of the attorneys representing the parties at the trials, the admission of indigent persons to the judiciary assistance-office, the exercise of the right of peremptory challenge and the manner of proceeding in case of equal division in the judgments of the court of appeals. The *projet* of regulations so prepared shall be transmitted to the tribunals of first instance for their observations, and after a new deliberation which shall be final, shall be put in execution by decree of the minister of justice.

ARTICLE XXXVIII. The tribunals in civil and commercial matters shall not have cognizance of mixed cases until one month after their establishment.

ARTICLE XXXIX. The foreign consulate shall finally decide the cases already commenced before them at the establishment of the tribunals. Nevertheless, at the request of the parties and with the consent of all the interested parties, they can be referred to the new tribunals.

TITLE II.

Jurisdiction in penal matters in what concerns foreigners accused.

CHAPTER I.

*Tribunals of offenses of correctional police and court of assizes.**Section I.—Composition.*

ARTICLE I. The judge of the offenses charged against foreigners shall be one of the foreign members of the tribunals.

ARTICLE II. The court for the trial of offenses, as well as of criminal matters, shall be composed of three judges, one native and two foreigners, and of four foreign assessors.

ARTICLE III. The correctional tribunal shall be composed in the same way.

ARTICLE IV. The court of assizes shall be composed of three counselors, one native and two foreigners. The twelve jurors shall be foreigners. In this last case the half of the assessors and of the jury shall be of the nationality of the accused if he ask for it. In case the list of the jury and the assessors of the nationality of the accused shall be insufficient, he will designate the nationality to which they shall belong in order to complete the number required.

ARTICLE V. When there are several accused, each of them will have the right to ask for an equal number of assessors or of jurors, provided no increase in the number of assessors and jurors shall be made, and provided the accused who, by reason of the number cannot exercise their rights, shall be determined by lot.

Section II.—Competence.

ARTICLE VI. Prosecution for simple police offenses and accusations made against the authors and accomplices of the following crimes and offenses, shall be submitted to the jurisdiction of the Egyptian tribunals, viz :

ARTICLE VII. Crimes and offenses committed directly against the magistrates, the jury, and the officers of justice, in the performance or on the occasion of the performance of their duties :

- a. Outrages by gestures, words, or threats.
- b. Slanders, abuses, provided they have been proffered as well in the presence of the magistrate, the jury, or of the officer of justice, as in the presence of the tribunal, or published by placards, writings, prints, engravings, or emblems.
- c. Acts against their person, including blows, wounds, homicide, with or without premeditation.
- d. Acts performed against them, or threats made to them, in order to obtain an unjust or illegal act, or the abstaining from a just and legal act.
- e. Attempts at corruption exercised directly against them.
- f. Abuse by a public functionary of his authority against them for the same end.
- g. Recommendation made to a judge by a public functionary in favor of one of the parties.

ARTICLE VIII. Crimes and offenses committed directly against the execution of the judgments and decrees of justice, viz :

- a. Attacks and resistance with violence or assault against the magistrates in the performance of their duties, or of officers of justice, in the legal execution of the judgments or decrees of justice, or against the guardian or agents charged with giving assistance in such execution.
- b. Abuse of authority of a public functionary in order to prevent the execution.
- c. Larceny of judicial documents for the same end.
- d. Breaking of seals affixed by judicial authority ; destroying goods seized by virtue of an ordinance or a judgment.
- e. Escape of prisoners detained by virtue of a decree or a judgment, and acts which directly procured the escape.
- f. Counseling prisoners escaped in the same circumstances.
- g. The charges, while they concern directly the bankrupt, for facts characteristic of the fraudulent bankruptcy made by him, after the signification or the notice of the declaratory judgment of the failure, by embezzling or concealing a part of his effects to the prejudice of the mass of creditors, by concealing or destroying his books with the intention to make the embezzlement or that concealment of the effects, or by constituting him, or causing himself to be recognized, for the same purpose as a debtor of amounts which he did not actually owe.

ARTICLE IX. The crimes and offenses imputed to the judges, jurors, and officers of justice, when they may be charged to have done them while in the performance of their duties, or by an abuse of their powers, viz :

Besides the common crimes and offenses which can be imputed to them in those circumstances, the special crimes and offenses are :

- a. Unjust judgment given by favor or enmity.
- b. Corruption.
- c. Concealing attempts at corruption.
- d. Denial of justice.
- e. Violence used against private individuals.
- f. Violation of the residence without the legal formalities.
- g. Extortions.
- h. Embezzlement of the public funds.
- i. Illegal arrests.
- j. Faults in the judgments and decrees.

ARTICLE X. In the preceding dispositions the clerks, the sworn assistant clerks, the interpreters attached to the tribunals, and the titular huissiers (tipstaff officers) are comprised under the designation of officers of justice ; but not the persons accidentally in charge, by delegation of the tribunal of a signification, or of an act of the tipstaff.

CHAPTER II.

*Modification of the criminal code for the trial of offenses, crimes, and misdemeanors, on complaint of foreigners.**Section I.—Prosecution.*

ARTICLE XI. When a member of the consular body shall give information of a delinquent act against a magistrate or an officer of justice, the government shall give to the public ministry the necessary orders, who will be bound to act upon the information.

ARTICLE XII. All prosecutions for crimes and offenses will form the object of an instruction, which will be submitted to the chamber of the council.

ARTICLE XIII. The consul of the accused shall, without delay, be informed of any prosecution for crimes and offenses commenced against his subject.

Section II.—Instruction.—Hearing.

ARTICLE XIV. The hearing as well as the pleadings shall be in the judiciary language with which the accused is acquainted.

ARTICLE XV. Every hearing against a foreigner, as well as the direction of the pleadings at the trial, shall belong to a foreign magistrate as much in simple police-matters as in criminal and correctional ones.

ARTICLE XVI. If the person accused of a crime or offense has no advocate one shall be appointed by the court the moment of arraignment, under pain of nullity.

ARTICLE XVII. Until it is ascertained that there are sufficient jails in Egypt, the accused who has been arrested shall be delivered to the consul immediately after the arraignment and within twenty-four hours after his arrest, unless the consul authorizes the detention in the government-prison.

ARTICLE XVIII. The witness who shall refuse to answer to the judge of instruction or before a judicial tribunal can be condemned to imprisonment, which will vary from one week to one month in cases of offense, and which can be extended to three months in cases of crime, or in any case to a fine of from 100 to 4,000 Egyptian piasters.

ARTICLE XIX. The only witnesses that can be challenged are the parents, descendants, and the brothers and sisters of the accused or his kindred to the same degree, and husband and wife even divorced, and such testimony shall be excluded even if neither the prosecuting officer nor the civil party nor the accused shall object.

ARTICLE XX. When in the course of a trial it shall be found necessary to make a domiciliary visit, the consul of the accused will be informed.

An official report of the information given to the consul will be drawn up; a copy of that report will be left at the consulate at the time of the visit.

ARTICLE XXI. Except the case of flagrant offense or a call for help from the interior, no domicile can be entered during the night except in the presence of the consul or of his delegate, if he did not authorize such visit without his presence.

Section III.—Regulation of competence in conflicts of jurisdiction.

ARTICLE XXII. Three days before the meeting of the chamber of the council the communication of the papers of the trial will be made to the record-office, to the consul, or to his delegate.

Legal documents of which the consul demands copies must be delivered to him under penalty of nullity.

ARTICLE XXIII. If on the communication of the papers the consul insists that the affair belongs to his jurisdiction, and that it should be referred to his tribunal, the question of competency, if disputed by the Egyptian government, shall be submitted to the arbitration of a council composed of two councilors or judges selected by the president of the court and of two consuls chosen by the consul of the accused.

ARTICLE XXIV. When the judge of instruction and the consul shall adjudicate at the same time on the same case, if one of them does not think proper to admit his incompetency, the council of conflicts must meet in order to settle the difference on the demand of one of them.

It is well understood that the conflict cannot be raised by the judge of trial on the occasion of an ordinary crime or offense, the more the crime or the offense which he may insist on having been committed shall be qualified by the bill of indictment before him in conformity to the aforesaid categories of acts referred to the new tribunals. Finally, if the magistrate or officer of justice has brought his complaint before the consular tribunal, that tribunal shall decide upon the complaint without any possibility of conflict.

ARTICLE XXV. The tribunal which, after the aforesaid formalities have been performed, will remain in charge of the affair, shall have final jurisdiction in the case.

Section IV.—Pleadings before the court of assizes.

ARTICLE XXVI. Before the court of assizes, when the pleadings shall be closed and the questions to be asked from the judges fixed, the president shall resume the affair and the principal proofs for or against the accused.

Section V.—Of the appeal and of the review against the judgments in cases of offenses.

ARTICLE XXVII. The appeal when allowed in matters of offenses against the judgments of the tribunal of simple police will be brought before the correctional tribunal.

ARTICLE XXVIII. Appeals, in case they are authorized by the code of criminal instruction against the condemnatory judgments in penal matters, shall be brought before the court composed as in civil matters.

The judges having seats in the court of assizes cannot hear appeals from the decrees of the court.

Section VI.—Selection of jurors and choice of assessors.

ARTICLE XXIX. The list of the judges of foreign nationality will be made annually by the consular body.

To that effect every consul will furnish the dean of the consular body the list of his countrymen having the conditions required for jurors. Each juror must be 30 years old and have resided at least one year in Egypt.

ARTICLE XXX. The final list will be made by the consular body from the aforesaid partial lists after elimination until the total required number is obtained, not exceeding two hundred and fifty.

ARTICLE XXXI. The number of jurors of each nationality shall be thirty and the minimum eighteen, provided that in this last case the composition of the nationality permits it.

ARTICLE XXXII. The correctional assessors shall be chosen by the consular body from the jury-list.

ARTICLE XXXIII. The minimum of the assessors of each nationality shall be six and the maximum twelve.

ARTICLE XXXIV. When a correctional offense is to be judged in one town where there is not a sufficient number of foreign assessors, the court will summon the assessors from the neighboring tribunal.

ARTICLE XXXV. The assessors or jurors who refuse to appear to perform their duties, shall be condemned by the tribunal or the court, as the case may be, to a fine from 200 to 4,000 Egyptian piasters, unless they have lawful reasons for their absence.

Section VII.—Execution.

ARTICLE XXXVI. Until it is ascertained that sufficient jails really exist in Egypt the persons condemned to imprisonment shall be detained in the consular prison if the consuls so request.

ARTICLE XXXVII. The consul whose subject undergoes his punishment in the establishments of the Egyptian government shall have the right to visit the jails and satisfy himself as to their condition.

ARTICLE XXXVIII. In case of a condemnation to capital punishment, the representatives of the powers will have the right to claim their subject. To that effect a sufficient delay must intervene between the sentence and its execution in order to give to the representatives time to express their intentions in the case.

TITLE III.

Section I.—Special dispositions.

ARTICLE XXXIX. There will be established at the new tribunals a sufficient number of agents, chosen by the tribunals themselves, to be able, when there will be no risk of delay, to assist, if necessary, the magistrates and the officers of justice in their duties.

Section II.—Final disposition.

ARTICLE XL. During the period of five years no change shall take place in the adopted system. After this period, if experience has not confirmed the practical utility of the judicial reform, the powers will have the right to return to the old order of things, or to treat with the Egyptian government for other combinations.

No. 461.

Mr. Boker to Mr. Fish.

No. 109.]

LEGATION OF THE UNITED STATES,
Constantinople, May 16, 1873. (Received June 5.)

SIR: I have the honor to say that late last evening the following changes were made in the Ottoman ministry: Rachid Pasha, formerly

minister of public works, was appointed minister of foreign affairs; and Ahmet Monkhtar Pasha, formerly governor of Yemen, was appointed to the post left vacant by the elevation of Rachid Pasha.

The change in the ministry of foreign affairs is regarded with satisfaction by all who have business to transact with that department. We may now have hope that many affairs of interest, which have been incubating under the benevolent eyes of Safvet Pasha, may come to something within a reasonable time under the more intelligent and decided treatment of his successor.

I have, &c.,

GEORGE H. BOKER.

No. 462.

Mr. Boker to Mr. Fish.

No. 112.]

LEGATION OF THE UNITED STATES,
Constantinople, May 29, 1873. (Received June 19.)

SIR: I have the honor herewith to inclose a copy of a letter addressed by the British ambassador at Constantinople to the Egyptian minister of foreign affairs, formally accepting, on the part of the government of the former, the plan of the proposed judicial reform in Egypt, as settled by the report of the international commission that lately sat in Constantinople, and to which the consul-general of the United States was a delegate.

I have, &c.,

GEORGE H. BOKER.

[Inclosure.]

Sir Henry Elliot to Nubar Pasha.

THÉRAPIA, May 26, 1873.

SIR: I have the honor to inform your excellency that Her Majesty's government have intimated to me that they are prepared forthwith to accept the proposed arrangements respecting the judicial reforms in Egypt, and to sanction the report of the international commission.

The question which was raised respecting the nationality of the judges to be named for the new tribunal received the attention that it deserved from Her Majesty's government, who concur in the views of the Khedive as to the importance of avoiding giving any preponderance to one nationality over another in the selection of the judges, either in constituting the tribunal or in supplying the vacancies that may from time to time occur among them.

The point was held to be so essential, not only for the interests of British litigants, but also to secure the new tribunals from any suspicion of partiality, that, to prevent any question of the kind from hereafter arising, Her Majesty's government have instructed me to intimate that their final acceptance was dependent upon the maintenance of this principle.

The intimation which your excellency has given to myself and some of my colleagues, of the intention of His Highness in this matter, is a sufficient guarantee of the identity of the views of His Highness with those of Her Majesty's government.

In a note from Her Majesty's government to the French ambassador in London, in July, 1870, it was suggested that when the powers had intimated their acceptance it should rest with His Highness the Viceroy to obtain the assent of the Sultan to the proposed reforms, and with the Sultan to make known to the different powers that they were sanctioned by him.

Her Majesty's government adhere to this opinion of the proper course to follow, and leave the final steps to be taken in the hands of His Highness.

I avail, &c.,

HENRY ELLIOT.

No. 463.

Mr. Boker to Mr. Fish.

No. 123.]

LEGATION OF THE UNITED STATES,
Constantinople, July 2, 1873. (Received July 24.)

SIR: I have the honor to say that no slight excitement was lately produced in Constantinople by the unexpected announcement that the Sultan had accorded a new firman to the Viceroy of Egypt, which would render the latter almost independent of his sovereign. The firman has not yet been made public, but I have had an opportunity of examining its contents, the substance of which is as follows:

The document begins by confirming to the Viceroy all the privileges heretofore secured to himself or his ancestors, by any previous firmans or hatts whatsoever. These edicts related chiefly to the settlement of the hereditary succession in the male line of the Pashalic of Egypt.

Then follow grants of certain new privileges. The entire internal government of Egypt is confided absolutely to the Khedive. He is empowered to make treaties of commerce, but of commerce only, with foreign powers, provided these treaties shall not conflict with those already made by the Sublime Porte. He is empowered to raise loans, without previous authorization by the imperial government. He is empowered to keep on foot any military establishment that he may desire. He is empowered to construct a fleet of any kind, with the exception of iron-clads; for the building of the latter class of ships he must obtain, as occasion for their construction may arise, a separate permission from the Sultan. The firman concludes by graciously continuing to the Viceroy the privilege of paying into the imperial treasury the annual tribute of one hundred and fifty thousand purses.

The terms of the new firman have occasioned severe comments among the old Turkish party, and the representatives of the protecting powers. By them the conditions are interpreted to imply a virtual surrender of the Sultan's sovereignty over his richest and most powerful province. The increase of strength and of independence which will follow the execution of the terms of the firman will in a few years certainly place the Viceroy in a position to rupture at will the last tie which binds him to the empire. But as in times of peace the connection between Turkey and Egypt has been of little real value to the former, and as in times of war, the Sultan would be in no condition to compel the fidelity of his great vassal, the future of the question may be said to rest, where it will always rest, whether Egypt be weak or strong, upon the loyalty of the Viceroy. Of this quality he makes ample professions at present, and if he should change his mind, I cannot see how Turkey could avoid the consequences of his inconstancy.

I have, &c.,

GEO. H. BOKER.

2.—EGYPT.

No. 464.

Mr. Beardsley to Mr. Hale.

No. 19.]

AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,
October 16, 1872. (Received November 5.)

SIR: Referring to my dispatch No. 9, inclosing a copy of a telegram from Massowah in reference to the movements of the Egyptian forces

under Munzinger Bey, I have now the honor to communicate all the information I have been able to obtain concerning the so-called invasion of Abyssinia.

The country of Bogos, containing about 10,000 inhabitants, lies between Egypt and Abyssinia proper, and has, until lately, been regarded as neutral territory, although in the time of Mohamed Ali it was claimed and acknowledged, I believe, as a part of that prince's territory.

Situated almost on the Red Sea, with Massowah for its only port, Egypt has always manifested an interest in its welfare, and has always claimed a right to possess it, should necessity require it, as a protection to its frontiers.

It is said to be naturally a fine agricultural country, but, from the nature of its position, it has been overrun and pillaged by both Abyssinians and Egyptians, until what little prosperity it is said once to have enjoyed has been entirely destroyed.

The Egyptian government claims that it has of late been not only overrun by the Abyssinians, but that Prince Kassa has made it the base for frequent predatory incursions into Egyptian territory, on which occasions large numbers of cattle, horses, and other property have been carried off. It is to restore peace to Bogos and prevent like incursions in the future that the expedition of Munzinger Bey has been undertaken; such, at least, is the explanation of the Egyptian government.

Munzinger left Massowah on the 25th of last June, at the head of 1,200 Egyptian soldiers, well armed and equipped, and after a rapid and unimpeded march, occupied Kevem, the capital of Bogos, where he is now installed as military governor of the province.

At the time of this movement Prince Kassa was engaged in a predatory war with the Walla-Gallas, a strong tribe of Abyssinia, occupying the territory just south of Tigré, Kassa's province. Having been beaten by the Gallas, and hearing of the invasion of Bogos by Egyptian troops, he hastily retreated to Adoa, the capital of Tigré, to prepare means to resist the forces of Munzinger.

Kassa's troops are represented to be badly armed and worse disciplined; and, however superior may be his numbers, he can never successfully cope with the well-trained and well-armed soldiers of Egypt.

It may be remembered that Kassa is the Abyssinia prince who rendered valuable service to the English in their expedition against King Theodore, and who, since that time, has claimed to himself the title of King of Abyssinia.

When that expedition left Abyssinia, an Englishman of the name of Kirkham remained behind and attached himself to the cause of Prince Kassa; he is believed to have been a sergeant, or some other petty officer, in the English army, honorably discharged. It is said that he has been of great service to Kassa, whose confidence he is said to possess to a remarkable degree, and over whom he has exercised a good influence.

Kassa has now, feeling his own helplessness, implored the protection of the European powers as against the movements of the Egyptian government, and has dispatched Kirkham to Europe with letters to the various sovereigns; his chief hope of assistance, however, being from the Queen of England. Kirkham passed through Alexandria a few days ago, and had an interview with Her Britannic Majesty's agent and consul-general, Colonel Stanton. He stated freely the object of his mission, and said that Kassa viewed the occupation of Bogos by the Egyptian troops as

an invasion of Abyssinian territory, which he felt sure the European powers would resent with force, if necessary.

Munzinger Bey is of German origin, and has lived in the vicinity of Massowah for the last twenty years; at present he is governor of Massowah and Bogos. At Massowah, where he has been stationed as governor for several years, he has done much for the improvement of the country, and he is generally regarded, I believe, as an active, intelligent man, and a good executive officer.

What the Khedive's ulterior object is in this forcible occupation of Bogos, it is impossible to say; but his well-known and laudable ambition to bring within the pale of Egyptian law and authority all of that great country lying about the head-waters of the Nile, makes it reasonable to presume that it is a preliminary and experimental step toward the subjugation of Northern Abyssinia.

That the Nile is the natural and only practical outlet for all the country watered by its great lakes and their tributaries there is no question, and it would seem to be beyond doubt that its entire subjugation to the Khedive's rule would be a blessing to it beyond estimation; while at the same time it would open up to the commerce of the world a country unsurpassed, perhaps, in fertility and natural resources.

The slave-trade, the curse of the country, would be done away with; resources of mineral and vegetable wealth would be developed to the great interest of Egypt and Europe, and the ambition of the Khedive, now bounded by the deserts which overlook and hem in the valley of the Nile, would find legitimate satisfaction and employment in bringing within the pale of civilization and adding to his dominions an extensive territory, abounding in all that contributes to the wealth and material prosperity of a great empire.

The expedition under command of Sir Samuel Baker was the commencement of the realization of this grand project, and there is but little doubt in my mind that the occupation of Bogos is but another step in the pre-arranged programme. The telegraph is already completed and working to Kartoum, and the railroad is slowly but surely following it; while the project of making the cataracts passable for steamers has been considered and pronounced practicable by English engineers.

I have thus endeavored to indicate the signification of the occupation of Bogos, and to express my belief that it is but one of a series of movements on the part of the Egyptian government with the objective aim of bringing all the territory bordering on the Nile and its sources under Egyptian rule; a result highly desirable to all well-wishers of Central Africa, provided it can be accomplished without interfering with the Christian church of Abyssinia, which, however debased it may be at present, is the only foundation on which can be reared a nobler fabric.

I inclose herewith a rough outline of Upper Nubia and Northern Abyssinia, showing the small territory of Bogos, and its peculiar position as regards Egypt, the southern boundary-line of Egypt, and the course of the Nile and some of its tributaries.

I have, &c.,

R. BEARDSLEY,
United States Agent and Consul-General.

No. 465.

Mr. Beardsley to Mr. Fish.

No. 32.]

AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,*Alexandria, November 15, 1872. (Received December 10.)*

SIR: I have the honor to inclose herewith a translation of the Sultan's imperial firman, which was publicly read at Cairo on the 30th of September, as announced in my dispatch No. 16, of October 5.

It will be observed that the firman itself, which bears date of September 10, 1872, is general in its terms, and merely confirms the privileges granted by the former firmans of 1867 and 1869, while the hatt, which bears the later date of September 25, 1872, especially empowers the Egyptian government to contract and negotiate foreign loans without the authorization of the Porte.

It is believed that the firman alone was read on the date mentioned in my dispatch, and that the hatt was delivered to His Highness the Khedive, at a later date, having been brought by a special envoy who is known to have arrived in Egypt about a week after the firman was read at Cairo. This will account in a measure for the reluctance of the Egyptian government to make known the contents of this important document and the fact that a translation of it appeared in the public journals at Constantinople before it was furnished to the foreign representatives here.

That the exact terms of the firmans of 1867 and 1869 may be on file in the Department, I propose to obtain translations of these documents as soon as possible, and forward in a future dispatch.

I am, &c.,

R. BEARDSLEY.

[Inclosure 1.—Translation.]

Imperial firman of the Sultan, read at Cairo on the 30th September, 1872.

The privileges accorded by our government to the Egyptian government with a view to develop the prosperity of Egypt, are conditional on the entire fulfillment of the duties of the said government toward us, which duties have been already determined by our imperial orders.

In virtue of our imperial firman issued on the 5th Sefer, 1284, (7th June, 1867,) the internal administration, and, consequently, the financial interests of Egypt, have devolved upon the Egyptian government.

By our imperial favor it has been intrusted with the care of all that concerns the internal organization and the general progress of the country.

This being the case, you have represented to us that certain restrictions and exceptions contained in our firman of the 22d of Shaban, 1286, raised serious obstacles to the development and prosperity of Egypt.

You must be aware that the prosperity and happiness of our subjects are of the most vital importance in our eyes and the object of our most cherished desires.

The realization of these desires naturally depends on the means and facilities accorded for that purpose.

This being our imperial will, it is against our desire that the progress and the prosperity of Egypt should be trammelled by the restrictions appended to the privileges which our sovereign munificence accorded to the Egyptian government with a view to the development of its material and financial interests.

We have therefore ordered that the privileges conceded to you in our firman of the 5th Sefer, 1284, (7th June, 1867,) be maintained, and we have given the requisite instructions for the issuing of this supreme order from the Sublime Porte.

On the 7th day of Redjib, 1289, (10th September, 1872.)

HATT.

The material and financial administration of Egypt having, in virtue of several of our imperial firmans, devolved entirely upon you the power of effecting foreign loans and of applying them for the welfare of Egypt, is comprised within the bounds of the privilege specially granted to the Egyptian government.

Henceforth, therefore, whenever, for the prosperity of the country, the contracting of a foreign loan becomes requisite we renew and confirm to you our permission to borrow the necessary sums in the name of the Egyptian government, and without asking us for a previous authorization.

The 22d Redjib, 1289, (25th September, 1872.)

No. 466.

Mr. Beardsley to Mr. Fish.

No. 46.]

AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,

Cairo, December 12, 1872. (Received January 27, 1873.)

SIR: Recurring to my last dispatch, No. 45, detailing an interview with His Highness the Khedive, I have the honor to report in continuation of the same interview the substance of His Highness's remarks concerning the future railway development of Egypt.

His Highness considers that the railway system of Lower Egypt is sufficiently extended for the present, and that sound policy dictates that the resources of the country should now be devoted to the work of extending the railway into Upper Egypt and Nubia.

It is desirable that Port Saïd, Damietta, and Rosetta should be connected with Alexandria by a coast line; but that is a project of secondary importance. With Suez, Ismailia, Zagazig, and Mansoorah brought into close connection with Cairo and Alexandria, the Delta of Egypt is sufficiently supplied with commercial arteries to meet the demands of the hour. Egypt's mission, His Highness thinks, is to civilize Africa by pushing up through the valley of the Nile, and overflowing Nubia and the Soudan. To do this the railway system of Upper Egypt must be completed, and communication established with those countries.

The railway is now finished to Roda, 180 miles south of Cairo. It is proposed to complete the line to Assonan at the first cataract, and thus, with a few side branches to the several oases, make the railway system of Egypt proper complete.

From Assonan to the second cataract it is estimated that, owing to engineering difficulties, the expense of a railway would be £4,000,000 sterling. This sum His Highness considers to be more than the resources of Egypt will at present bear, and it is proposed to establish water-communication between those two points by transporting the Nile steamers over the first cataract by means of a marine railway, the expense of which will be insignificant compared with either the expense of the railway to the second cataract or with locks at the first cataract. This work His Highness thinks will be completed in four years from this date.

From the second cataract the railway will again commence and run to Khartoum, from whence it will eventually be carried on one branch to Dongola, and the other to Massowah on the Red Sea.

To reach Massowah by rail the territory of Bogos must be crossed: It thus appears that the occupation of Bogos by the Egyptian government looked toward the completion of the railway system of Egypt

rather than to the invasion of Abyssinia, and was a preliminary step toward bringing all the territory tributary to the Upper Nile within the pale of Egyptian authority, as indicated in my dispatch No. 19 of October 16.

To accomplish this it is not necessary that Abyssinia should be disturbed, and His Highness disavows all wish or intention of molesting her; conscious that in developing the resources of his own territory he has a difficult and arduous work to perform, which will sufficiently task all his energies, without the political embarrassments which an invasion of Abyssinia would entail.

On this as well as former occasions His Highness emphatically asserted that Bogos has been Egyptian territory since the time of Mehemet Ali, and that in taking possession of it he was only asserting rights which had lain dormant since the time of Saïd Pasha, during whose reign the Egyptian forces were withdrawn owing to causes brought about by French influence exerted in favor of certain Catholic missionaries, to protect whom the government of Saïd Pasha was not disposed to wage an internal warfare. The history of Bogos for the last forty years appears not to be well known here, but I see no reason to doubt the statements of His Highness; and I believe Prince Kassa, of Abyssinia, has no good reason for apprehending an invasion of his territory.

If I have devoted more time and space to this subject than its merits would seem to warrant, it is because it has been a subject of considerable discussion here, as well as in Europe, where the idea seems to prevail that the Khedive is bent upon the annexation of Abyssinia.

I am, &c.,

R. BEARDSLEY.

No. 467.

Mr. Beardsley to Mr. Fish.

No. 53.]

AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,
Cairo, January 3, 1873. (Received February 1.)

SIR: I have the honor to report the arrival in Egypt on the 16th ultimo, and the departure from Egypt, via Suez, on the ———, of Sir Bartle Frere, the nature of whose mission to the Sultan of Zanzibar, with the view of suppressing the slave-trade of those parts, has been, undoubtedly, fully explained to you already.

Sir Bartle had several interviews with the Khedive, and was very active in procuring all possible information concerning the slave-trade in Egypt. The general result of his inquiries may be inferred from his remark that he had not expected that his work was to begin in Egypt.

I think he left Egypt with the feeling that it will be difficult to suppress the slave-trade in central Africa while the demand for slaves in Egypt remains as great as at present.

I hope to be able to send you some statistics on this subject which will throw some light on the much-debated question as to the actual extent of slavery in Egypt.

I am, &c.,

R. BEARDSLEY.

No. 468.

Mr. Beardsley to Mr. Fish.

No. 56.] AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,
Cairo, January 7, 1873. (Received February 12.)

SIR: I have the honor to report the arrival at Alexandria on the 22d ultimo of the United States ship Congress, Captain Rhind commanding.

Captain Rhind and most of his officers came to Cairo, and on the 28th ultimo I had the pleasure of presenting them to His Highness the Khedive, who appeared highly gratified with the interview and expressed the hope that more of our men-of-war would visit these waters in the future.

The presence of our ships in the Levant always has a most beneficial effect upon American interests, more, perhaps, than the Navy Department is aware of. Alexandria is a safe and commodious port, the winter climate is unsurpassed for salubrity, and the expense of remaining here is perhaps no greater than at Nice or Spezia, while the moral effect of the display of our flag is infinitely greater here than there.

I think our varied and growing interests in Egypt will warrant me in suggesting to the Department the propriety of keeping at least one of the vessels of our European squadron in these waters during the winter months.

The Congress sailed for Naples on the 2d instant.

I am, &c.,

R. BEARDSLEY.

No. 469.*Mr. Beardsley to Mr. Fish.*

No. 59.] AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,
Cairo, January 25, 1873. (Received February 18.)

SIR: By invitation of His Majesty the Khedive I attended this morning a distribution of prizes to the students of the national schools at Cairo.

About one hundred and fifty prizes were distributed.

I send you by this mail two pamphlets, one containing a list of the pupils who received prizes, with the number of their class, rating, &c., and the other a statistical report on the actual condition of the schools, native and foreign, in Egypt. By the latter document it will be observed: (1) that the national schools are systematically graded from preparatory and normal up to the higher grades of literature and languages, medicine and surgery, and polytechnics; (2) that fifty-one students are being educated in Europe at government expense; (3) that at Cairo, Alexandria, and the chief towns and villages there are 2,067 schools, with 2,381 teachers, and 77,292 pupils; (4) that each pupil pays from one to four piasters a month, according to his means, the piaster being equal to five cents of our money; and (5) that these schools are all under the control of the department of public instruction. There are also in the public schools 5,010 scholars who are being educated partly at the ex-

pense of the government and partly at the expense of religious estates, making a total of 82,302 students in the national schools.

Under the head of European schools are classed all independent schools. These are mostly under missionary auspices, and the number of scholars here given at Cairo and Alexandria is 5,978, which, added to 82,302, the number of scholars in the national schools, makes a total of 88,280 scholars.

Besides these schools, however, there are many missionary schools in Upper Egypt, and the regimental schools in the army, of which no mention is made in the report in question. It is safe to say that the number of scholars in all the schools in Egypt will not fall much short of 100,000.

A noticeable feature of this report is the mention of the establishment of a school for girls, which is an innovation of Oriental thought and custom almost too great to be realized.

I have visited some of the schools of this city and will visit the balance of them the coming week, when I will be better prepared to report as to their efficiency. So far as I have seen they appear to be well conducted, and their influence for good upon the future of Egypt is beyond all calculation.

I am, &c.,

R. BEARDSLEY.

No. 470.

Mr. Beardsley to Mr. Fish.

[Extract.]

No. 65.]

AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES IN EGYPT,
Cairo, February 15, 1873. (Received March 24.)

SIR: I have the honor to report that the marriage of Prince Hassan, third son of the Khedive, with the princess the daughter of Mohammed Ali Pacha, was consummated on Monday, the 10th instant, and was followed by the same *fêtes*, ceremonies, and entertainments as were given in honor of the former marriages, as indicated in my preceding dispatches.

During the past month nightly entertainments have been given to thousands of persons; semi-weekly representations by expensive artists have been given in the hippodrome; presents have been distributed to rich and poor; gold has been strewn in the streets in front of each bridal procession and thrown from the windows of the banking-houses to the struggling crowds below; invited guests have been entertained in a princely manner, and bridal gifts and *trousseaux* have been presented rivaling in magnificence and value the most exaggerated descriptions of Oriental tales. It is sufficient to mention dresses covered and heavy with diamonds and Oriental pearls, tiaras resplendent with hundreds of diamonds of the first water, girdles dazzling with precious stones, and slippers of gold ornamented with rubies and emeralds, to indicate the nature and value of the bridal presents. It is said by persons supposed to be competent of judging that the value of the presents given by Prince Toussoum Pacha to his bride was £100,000 sterling, and that her *trousseau* cost a far greater sum. In an Oriental land like this, where extravagance in display and expenditure is looked upon as a mark and prerogative of

royalty, it is perhaps wise and politic that the marriage of the hereditary prince should be celebrated with unusual ceremony and princely expenditure. * * * *

To each of the princes already married has been given a palace, suite, and all the paraphernalia of princely life; and each of the younger princes will expect as much when his marriage-day shall arrive. * * * *

The princes are all of them most estimable young men, of whom nothing but good can be said. They are intelligent, courteous, and gentlemanly, and they appear to be animated by a fraternal feeling for each other which, under the circumstances, is as refreshing as it is unexpected, and speaks volumes for their education. They are, moreover, industrious, and take an interest in the welfare of their country.

The hereditary prince, Mohammed Tewif Pacha, is president of the private council of His Highness the Khedive and presides at its meetings, and Prince Hussein Pacha is minister of public works. Prince Hassan Pacha has but lately returned from Oxford College, England, where he has spent the last four years. He will return to England and enter the military school at Woolwich. There is a report current that Prince Hassan intends visiting the United States this year, but I am satisfied that such is not the case. The Khedive wishes him to make the tour of the world, but not until he shall have completed his studies at Woolwich.

I am, &c.,

R. BEARDSLEY.

No. 471.

Mr. Beardsley to Mr. Fish.

No. 67.] AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES OF AMERICA AT ALEXANDRIA, EGYPT,
Cairo, February 24, 1873. (Received March 25.)

SIR: I have the honor to forward by this mail, direct to the Department, Mr. Fowler's report on the proposed railway to the Soudan and on the ship-incline over the first cataract.

The railway will commence at Wady Halfa, near the bottom of the second cataract, and continue up the right bank of the Nile 257 kilometers to Kohé, where it will cross to the left or west bank on an iron bridge. From Kohé it will follow the river as nearly as possible to Ambukol, a distance of 349 kilometers. At the latter place the Nile, making a great curve, runs northward and eastward about 240 kilometers to Aboo Hammed, where it again sweeps around to the south, and, passing Berber, receives the waters of the Atbara, and finally reaches Khartoum at the confluence of the Blue Nile and the White Nile. Within this great curve of the river lies the Bahinda Desert, uninhabited except by wandering Bedawée tribes. The railway will leave the river at Ambukol and cross this desert in almost a straight line to Shendy on the Nile, which will be the southern terminus of the Soudan Railway.

Shendy, 283 kilometers from Ambukol, is about 160 kilometers northeast of Khartoum and about the same distance southwest of Berber.

The entire length of the line from Wady Halfa to Shendy will be 889 kilometers; the estimated cost is £4,000,000 sterling; and the time required to complete the entire work, it is hoped, will not be more than three years from the date of its commencement. The narrow gauge of 3 feet 6 inches will be used, with rails weighing 50 pounds per yard and iron sleepers.

The works at the first cataract are to consist of a ship-railway upon which steamers and loaded boats may be transported up and down the cataract. The vessels will be floated upon a carriage, or cradle, constructed to run upon the railway, and will be hauled over land by powerful hydraulic engines of about 400 horse-power, placed near the center of the railway. The water to work these engines will be pumped up at a high pressure by a pair of large stream-wheels carried upon pontoons and driven by the rapids at the lower end of the cataract. The total cost of these works complete will be £200,000 sterling, and it is thought that they may be completed within one year and a half from the date of their commencement.

These two works, the Soudan Railway and the ship-incline, must be considered as integral parts of the same great enterprise, for either one of them would be of but little practical value without the other, the object being to afford an outlet by the Nile for the productions of the Soudan. At present only the lightest and most precious products of the Soudan can be brought down with any profit, owing to the great amount of land-carriage necessitated by the unnavigable condition of the river between the second and sixth cataracts, and to the frequent changes from water to land transportation.

The chief commercial centers of the Soudan for the collection of the products of a great part of Central Africa are Khartoum, Kordofan, and Darfur. Boats carrying about 40 tons of merchandise leave Khartoum and come down the river as far as Abou Hammed, where their cargoes are transferred to camels and cross the Nubian Desert to Korosko, below the Second Cataract, where they are again transferred to boats and carried down to the First Cataract; there they are a second time unloaded and carried around the cataract to Assouan, where they are finally reloaded into boats and proceed down the river to Cairo or Alexandria; thus having broken bulk four times, and having been carried overland, on camels, 390 kilometers.

From the Kordofan and Darfur districts the goods are brought by camels across the desert and embarked on the river at Dabbe and Handak, whence they are conveyed by boat and camel to lower Egypt, experiencing about the same number of changes as goods coming from Khartoum.

It is evident that Shendy will supersede Khartoum as a depot for the products of the Upper Nile when the Soudan Railway is completed. Merchandise then leaving Shendy, Dabbe, or Handak, by rail, will be transferred into boats at Wady Halfa, whence it will proceed unbroken to Alexandria, the loaded boats passing over the ship-incline at the First Cataract.

In my dispatch No. 46, of December 12, 1872, I had the honor to refer to the comprehensive views which His Highness the Khedive entertains in regard to the future development of the railway system of Egypt. The Soudan Railway is but one link in that system, which, when perfected, His Highness intends shall embrace an uninterrupted railway from Alexandria to Massowah on the Red Sea. Its benefits will then be more than local, for it will shorten the route to India and the East several days, and it may become the artery up which will flow the new blood which is to civilize Central Africa.

This work cannot but be of great national benefit in developing and utilizing a vast and fertile country which is now comparatively worthless. The Soudan and the country within reach of the navigable waters of the Nile is capable of great development, and is rich in many things which Egypt needs. Its soil is said to be well adapted to the growth of cotton, grain, and sugar; timber is comparatively plenty, labor is abundant and cheap, and it is hoped that coal may be found within reasonable distance of the Nile. Nothing will contribute more powerfully to demoralize and destroy the slave-trade in the Soudan than this railway, and in that point of view alone it is a desirable and praiseworthy enterprise.

Mr. Fowler is now in Egypt for the purpose of commencing the work at an early day, and it is confidently expected that it will be completed by the spring or summer of 1876.

I am, &c.,

R. BEARDSLEY.

No. 472.

Mr. Beardsley to Mr. Fish.

No. 68.] AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES OF AMERICA AT ALEXANDRIA, EGYPT,
Cairo, February 25, 1873. (Received March 25.)

SIR: I have the honor to report at this late day that the United States sloop of war Hartford arrived at Port Saïd on the 8th ultimo, and sailed from Suez for China on the 18th ultimo. I presume Mr. Page has already reported the arrival and departure of the Hartford, as well as the particulars of her passage through the canal. As Mr. Page does not send his dispatches through this office, I deem it prudent, even at this date, to report the Hartford's movements, that there may be no doubt of the information having been communicated to the Department.

I am, &c.,

R. BEARDSLEY.

No. 473.

Mr. Beardsley to Mr. Fish.

No. 79.] AGENCY AND CONSULATE-GENERAL OF THE
UNITED STATES AT ALEXANDRIA,
Cairo, April 3, 1873. (Rec'd May 6.)

SIR: I have the honor to report the arrival at Alexandria, on the morning of the 17th ultimo, of the United States frigate Wabash, bearing the flag of Rear-Admiral James Alden and commanded by Captain William G. Temple.

In the afternoon of the same day the Wachusett, Captain Fillebrown commanding, arrived.

On the 18th and 19th, the admiral and his staff paid and received the usual visits of courtesy at Alexandria, and on the 21st they came to Cairo.

On the 22d, I had the honor to present the admiral and his staff to His Highness the Khedive, who received them most cordially, and expressed great pleasure at seeing them in Egypt. In the afternoon of the same day an official visit was made to the hereditary prince at his palace at Kubba, several miles out of the city. The prince returned the admiral's visit on Monday, the 24th.

His Highness the Khedive, having heard that the admiral wished to visit the Suez Canal, placed a special train at his disposal and offered him a steamer for the canal. As the local train to Suez is very slow and tedious, the admiral accepted the special train, but declined the steamer, the canal company having already offered him one of their own boats for the passage of the canal. Leaving Cairo Tuesday morning, the 25th instant, the admiral reached Suez about noon the same day. Leaving Suez early Wednesday morning on the company's steamer, he reached Port Saïd in the evening, where the Wachusett was waiting for him, and on which he immediately embarked for Jaffa, reaching that place the next morning.

The Wachusett, returning from Jaffa, arrived off Alexandria Tuesday evening, the 1st instant, and, in attempting to enter the harbor, ran ashore. During the night, however, she got off with but little damage, as I understand, and is now in the dry-dock repairing.

A sudden illness prevented me going to Alexandria last week and will keep me here this week, and I cannot well give more particulars concerning this accident to the Wachusett until I go down.

The Wabash, with the admiral on board, sailed from Alexandria yesterday morning, the 2d instant, at 9 o'clock, for Athens.

The Wabash was the object of universal admiration during her stay at Alexandria, and was visited by many hundreds of citizens of that city, all of whom are enthusiastic in their admiration of the ship and loud in their praises of the universal courtesy of Captain Temple and his officers.

I am, &c.,

R. BEARDSLEY.

3.—TUNIS.

No. 474.

Mr. Heap to Mr. Hunter.

[Extract.]

No. 135.]

CONSULATE OF THE UNITED STATES,
Tunis, December 31, 1872. (Rec'd January 27, 1873.)

SIR: The political, financial, agricultural, and industrial condition of this regency during this year has, upon the whole, been satisfactory.

1. The policy of the Bey in drawing closer the ties which unite his country to the Ottoman Empire has resulted in giving him greater security from foreign aggression, as an attack on him might endanger the *status quo* of the "eastern question," which the great powers of Europe do not seem, for the present at least, to be desirous of disturbing. I had the honor to transmit in my dispatch No. 111, dated November 23, 1871, a translation of the Sultan's *firman* to the Bey, confirming him in his position as hereditary ruler of the regency of Tunis, and covering him with his protection as his suzerain.

2. The internal state of the country is generally quiet. The facility of evading the payment of taxes by the tribes on the borders of the great desert, and near the frontier of Algeria, has rendered them to a certain degree independent of the Bey's authority. Hitherto he has had a sufficient military force to compel these tribes to fulfill their duty to him, but the narrow limit to which his expenditures have been restricted has obliged him to reduce his army to the most moderate number of badly armed and poorly paid troops, who inspire the active bedouin with little awe.

3. The relations of the United States with this government are on the most friendly footing, and I have much pleasure in bearing testimony to the uniform cordiality and kindness of the Bey and his ministers whenever I have occasion to see them. The presence of our ships of war in these waters has always a beneficial influence, and the Bey is pleased to receive the visits of their commanders.

4. The finances of the government having, through extravagance, venality, and maladministration, been brought to a most deplorable state of confusion, the attention of foreign governments, more especially those whose subjects here are the most numerous, was called upon to apply some remedy to this state of things. The complaints of the Bey's foreign creditors had from time to time been quieted by various expedients, but each successive shift only increased the embarrassment when a new pay-day came around, until it became evident that unless some radical measures were devised, the Tunisian government, as well as its creditors, would be involved in financial ruin.

Under the auspices of England, France, and Italy, a commission was created in 1869, composed principally of foreigners of those three nationalities, which was charged with the collection of the revenue, or the best part of it, and, after reserving the amount necessary for the support of the government, with the payment of the interest of the public debt.

When a schedule of the liabilities of the government was made, the total amount was found to be so large that it was evident the country could not bear the taxation necessary to pay the interest of it, even if this were reduced from the exorbitant rates of 12, and even 18 per cent., heretofore allowed.

Two measures which caused great discontent and loud complaint were adopted.

First, the debt was reduced by cutting down each claim by an average of one-half its nominal value; and second, by the reduction of the interest to 5 per cent. These arbitrary measures bore hardest on the most honest creditors, but as these were in a very small minority, their outcries were unheeded, and they are now generally satisfied that the case required this heroic treatment, and without it it would have been impossible to save the remnant of their fortune. Even with this reduction of the debt the payment of the semi-annual coupon is made with difficulty, and the one due last July was paid with funds furnished by the prime minister, who was indemnified by the sale of bronze guns from the forts of the regency, which have been replaced with old and worthless iron ones furnished by the bankers Erlanger, of Paris, in 1864 and 1865.

5. These guns have formed the basis of a claim by these bankers, sustained by the German government, for over six millions of francs, which, under a threat of coercive measures, was recognized by the Bey and paid in August last. * * * *

6. The claim of an agricultural company to whom the Bey had granted a favorable concession or charter, with valuable immunities and privi-

leges, threatened at one time to involve him in serious difficulties with Italy, but through the timely intervention of the English and French governments it was submitted to arbitration. The Bey, confiding in the justice of his case, appointed an Italian and a Frenchman to represent him, and accepted for fifth arbitrator or umpire the president of the superior court of Italy, after the Italian government had declined in succession all the persons proposed by the Bey. The board met at Florence, in Italy. After rejecting a claim for enormous consequential damages, the tribunal decided that the direct ones should be assessed, and appointed two of its members to visit Tunis for this purpose. One of these has been instructed to use his influence with the Bey to induce him to grant an indemnity without waiting for their award, which it is foreseen will be extremely small.

* * * * *

7. The success of the Erlanger claim has warmed into life one that was thought dead half a century ago. This is a claim of the representatives of an Austrian subject for saddlery and harness furnished a minister of a former Bey, and was originally for four hundred thousand francs; by compounding the interest at 24 per cent. per annum this sum has swelled to one hundred and twenty millions. The claim is sustained by Austria, but for the sake of prompt payment it consents to accept fourteen and a half millions.

* * * * *

8. After several years of scarcity throughout the regency, and two of a general failure of the crops, a change for the better commenced in 1868, which has continued until they have come up this year to a full average. The winter of 1867 and 1868 was one of frightful suffering to this people. A famine, followed by a deadly epidemic, carried off fully one-third of the inhabitants. It is calculated that of the rural population one half was swept away. The loss of cattle for want of pasturage was also immense.

The olive and grain crops have been somewhat above the average this year. Olive-oil is the most valuable production of the country; an abundant crop is a source of wealth to the whole community. In fact the prosperity of the country rises and falls with the abundance or scarcity of this crop. For the first time in many years wheat is being exported, principally to Sicily, where the harvest was short. In the absence of statistics it is impossible to give a reliable estimate of the quantity produced. The salutary effects of an equitable system in the collection of taxes introduced by the financial commission are demonstrated by the greater breadth of land put under cultivation, which has been limited this year only by the means of the farmers in manual and animal labor.

9. There is great undeveloped mineral and agricultural wealth in this regency, but the unfortunate issue of every effort of the government to develop it has discouraged the Bey from offering inducements to foreign capitalists to invest in useful enterprises in his country. He has declared that, as European speculators who obtain "concessions" usually find means of holding him responsible for the losses they may sustain, he prefers to allow the resources of the country to remain undeveloped rather than expose himself to the reclamations of foreign governments which he is too weak to resist.

10. He has departed, however, in one instance from this policy, with no bad result.

In 1871 he granted a charter to an English company for several short railways, two of which are completed and in successful operation. The

company has given, so far, no trouble to the government, which was called upon for no other subsidy than the land on which the roads and stations are constructed. This satisfactory result has encouraged the Bey to grant charters for other and longer roads, that will open to commerce a rich grain-growing region, which is now excluded from its benefits by the want of economical transportation.

11. Some American capital is invested here in the improvement of the breed of cattle and horses, as well as in farming. Although the parties interested have had occasionally to complain of depredations by the Arabs, the local police has always rendered promptly the assistance and protection required, without obliging me to trouble the government with puerile complaints, and the Bey has more than once expressed his satisfaction at the manner in which this useful enterprise is conducted, and which contrasts so favorably with others.

I am, &c.,

G. H. HEAP.

No. 475.

Mr. Heep to Mr. Hunter.

No. 136.]

CONSULATE OF THE UNITED STATES,
Tunis, December 31, 1872. (Received Jan. 27, 1873.)

SIR: I regret to inform the Department of the murder, on the night of the 24th-25th instant, of Mahmood Sennen, dragoman of the United States consular agent at Bizerta.

He was found, pierced with fourteen wounds and stripped of his clothing, in a village near Bizerta. A considerable sum of money and several papers of value, belonging to Mr. Spizzichino, the consular agent, which were in charge of the dragoman, have disappeared. Four persons, brothers, against whom there is strong presumptive evidence, have been arrested, and are held for trial for the murder.

I am, &c.,

G. H. HEAP.

No. 476.

Mr. Heap to Mr. Hunter.

[Extract.]

No. 141.]

CONSULATE OF THE UNITED STATES,
Tunis, April 8, 1873. (Received April 29.)

SIR: I have refrained from again referring to the murder, on the night of the 24th-25th of December last, of the dragoman of the United States consular agent at Bizerta, which I communicated in my dispatch No. 136, dated December 31, 1872, in the hope that I might be able to inform the Department of the punishment of the guilty parties.

2. In this hope, I regret to say, I have been disappointed, and I am apprehensive that corrupt influences are at work to defeat the ends of justice.

3. As soon as I was notified by telegraph of the murder, I waited upon the prime minister, and requested him to give instructions to the governor of Bizerta to use every effort to discover and apprehend the murderers, which he promised to do. The governor, aided and stimulated by the consular agent, held an inquest at the village of Menzil-Djemil, where the murder was committed, and four men, three brothers and their servant, were arrested, with strong evidence of guilt and the testimony of almost the entire population of the village against three of them. Voluminous affidavits were taken in the presence of notaries, the inquest being conducted in accordance with the laws of the country, and the accused were sent in chains to the Bardo, the Bey's official residence, for trial.

4. The evidence against the brothers is overwhelming. They are rich land-proprietors, and it appears from the evidence that they committed the murder partly to rob the dragoman of a large sum of money and valuable papers in his possession, the property of Mr. Spizzichino, and partly from motives of revenge.

5. Among the Bey's officials there is one, the young general in command of his body-guard.

* * * * *

6. To this individual the murderers of Mahmood Sennen, the dragoman, have applied, and, possessing the means to secure his favor, they are striving to escape scot-free by casting upon their servant the burden of their guilt.

7. By Mohammedan law, a sentence of death for murder cannot be pronounced except upon the direct evidence of witnesses, or the dying deposition of the murdered person. As in this case the only witnesses of the murder were the murderers themselves, and the victim was placed beyond the possibility of making a deposition, the extreme penalty for their crime is a sentence to the galleys for life, with hard labor and the bastinado.

8. I have been unable to obtain that the accused be brought to trial. To every appeal I have made to the government, the reply has been that further depositions were being taken, which I know is not the case.

9. I only ask that the accused be tried by the Bey himself, and not by the sciara or ecclesiastical tribunal, where a denial upon oath, administered with certain solemnities, will, in the absence of direct testimony, be sufficient to acquit the accused.

10. In this state of the case, I beg respectfully to submit to the Department whether it would not be expedient to adopt some energetic measure to induce this government to give the very reasonable satisfaction I ask for the murder of a person so undeniably entitled to the protection of the United States as a dragoman.

11. It is a question, if an officer appointed to guard the person of a foreign representative and his residence can be assassinated with impunity, whether the representatives themselves, in the midst of a semi-barbarous and fanatical population, can enjoy security.

12. It will only need the exhibition of earnestness to bring this government to understand that the dignity of the United States cannot be trifled with, even in the person of one of its humblest *protégés*; and I, therefore, venture respectfully to suggest that I be directed to inform His Highness of the concern this matter has given the Department, and that instructions be sent to the admiral in command of our fleet in this sea to visit Tunis, in the event of a satisfactory solution not being arrived at.

13. The Department may be assured that it is farthest from my desire to foment difficulties between my government and this, and, if I take the liberty of suggesting this course, it is because I am convinced that nothing is better calculated to insure harmony and friendly relations in the future than the exhibition of firmness in the present case.

14. I have the honor to inclose the copy of a letter I have addressed to the Bey on this subject, but until I can inform him that I am acting under direct instructions from the Department, I apprehend that it will be of little avail against the fatal influence of his favorite.

I am, &c.,

G. H. HEAP.

[Inclosure.]

Mr. Heap to the Bey.

CONSULATE OF THE UNITED STATES, TUNIS, April 4, 1873.

His Highness the MUSEHIR SIDÉ MOHAMMED ESSADOK,

Reigning Prince and Possessor of the Kingdom of Tunis:

The undersigned, consul of the United States of America, begs to recall to Your Highness's recollection that, on the night of the 24th-25th of December last, a cruel and flagrant crime was committed on the person of Mahmood Sennan, a dragoman attached to the consular agency of the United States at Bizerta. His body was found at Menzil-Djemil, a village a few miles from Bizerta, stripped of nearly all its clothing and pierced with fourteen dagger-wounds. He had in his possession at the time of his assassination a considerable sum of money, which, together with valuable papers belonging to Mr. Spizzichino, has disappeared.

The undersigned respectfully refers Your Highness for information as to the authors of this great crime and their motives for committing it to the ample and voluminous testimony taken on the spot by the authorities of Bizerta, assisted by Mr. Spizzichino, the consular agent of the United States at that place.

The parties implicated by the testimony have been apprehended, but, though more than three months have elapsed since their arrest, no further steps have been taken, that the undersigned is aware of, to bring them to trial.

The undersigned has communicated to his Government the fact that an officer regularly attached to a consular agency of the United States, and therefore entitled to its protection, had been murdered, but regrets that he has been unable to inform it that anything has been done to bring the perpetrators of the crime to justice. The Government of the United States may well apprehend that if so serious an outrage can be committed with impunity on a person appointed for the protection of one of its representatives, there can be but little security in this country for the representatives themselves.

In any event, it is not probable that the Government of the United States, vigilant and jealous as it is in maintaining its just rights, and in guarding the honor, property, and lives of all who are entitled to its protection, will be satisfied with anything less than the most thorough and searching investigation as to the authors of this crime and the punishment of the guilty.

The undersigned has refrained as yet from calling the attention of his Government to the dilatoriness of the proceedings in this case, in the hope that he might be able to inform it that justice had been done. It is, therefore, with extreme regret that, after so long a delay and the formal assurance of his excellency the prime minister that every means should be taken to secure prompt justice, no progress appears to have been made in this case.

The undersigned does not doubt that Your Highness will be pleased to take this matter into serious consideration, and is confirmed in this belief by Your Highness's well-known love of justice, and the friendship and good-will Your Highness has invariably manifested toward the country and Government the undersigned has the honor to represent.

The undersigned avails himself of this occasion to renew the assurance of his high respect and distinguished consideration, with which he has the honor to be your Highness's most obedient servant,

G. H. HEAP.

No. 477.

Mr. Heap to Mr. Hunter.

No. 146.]

CONSULATE OF THE UNITED STATES,
Tunis, May 29, 1873. (Received June 25.)

SIR: I have the honor to acknowledge the receipt of your dispatches Nos. 63, 64, and 65, dated 3d, 5th, and 6th instant respectively.

2. I obtained an interview with the Bey yesterday, and informed him of the instructions I had received relative to the murder of the dragoman of the consular agent at Bizerta, in consequence of the delay that had occurred in bringing the murderers to trial and punishment.

3. The Bey expressed, with much earnestness, his regret at this delay, acknowledged that my complaint was well founded, and gave positive assurance that the parties arrested for the crime should be brought before him for trial this week, and if found guilty should be sentenced to the highest penalty of the law. He promised to inform me of the result of the trial on or before next mail-day, June 3.

4. I wrote to Admiral Alden at Ville Franche, on the 27th instant, begging him to delay the execution of his instructions from the Navy Department until I should inform him that the presence of a naval force was necessary, but that if my just expectations of a satisfactory solution of the affair were not realized, I should communicate with him by the telegraph.

5. I informed the Bey that a naval force had been ordered to Tunis, but it will depend on himself to keep this detail from the public; for not wishing to humiliate him in the eyes of his subjects, I have preferred to let it appear that in rendering justice he is not acting under compulsion.

6. The prompt action of the Department will have a salutary effect, for it will convince the Bey that the United States Government will not allow the interests or safety of those entitled to its protection to be placed in jeopardy without a strict account being demanded, and retribution, if justice is denied or unduly delayed.

I have, &c.,

GEO. H. HEAP.

No. 478.

Mr. Heap to Mr. Hunter.

[Extract.]

No. 147.]

CONSULATE OF THE UNITED STATES,
Tunis, June 2, 1873. (Received June 25.)

SIR: I have the satisfaction of stating that the Bey sent an officer yesterday to inform me that he had tried the four persons accused of the murder of the dragoman of the consular agent at Bizerta, that they were found guilty in different degrees, and sentenced as follows: One to the galleys for life with hard labor in chains, and the bastinado; the others to imprisonment for life.

2. According to the Mohammedan criminal law, no one convicted of murder can be sentenced to the death penalty, unless the conviction is

upon the dying declaration of the murdered person, or the evidence of witnesses of the fact. No circumstantial evidence, however conclusive, is sufficient to obtain a death-sentence. In this case all the evidence was circumstantial, and I am satisfied that the Bey has inflicted the highest penalties allowed by his law.

3. It is probable, however, that this result would not have been obtained had it not been for the intimation that a naval force would be sent here if justice was delayed. The Bey is very friendly and well disposed, but is, unfortunately, not always seconded in his good disposition by the officials that surround him. * * * *

4. I have informed Admiral Alden of the conclusion of this affair, and that it will be unnecessary to send a naval force here.

I have, &c.,

G. H. HEAP.

No. 479.

Mr. Heap to Mr. Hunter.

No. 148.]

CONSULATE OF THE UNITED STATES,
Tunis, June 7, 1873. (Received July 1.)

SIR: I am informed that the French have occupied a portion of Tunisian territory extending along the Algerian frontier, on which they are building forts and block-houses. This part of the regency is mountainous, and well-watered and wooded, and is inhabited by wild tribes over whom the Bey has little or no control. They have made raids on Algerian territory and carried off herds and flocks, and when pursued have retired into their mountains where it is difficult to follow them. As the Bey is powerless to prevent these outrages, the French aver that the only means to stop them is to occupy the country over the border.

In the vicinity of Tabarca, near Algeria, and for some distance inland, there are valuable forests of oak and cork trees, and mines of iron and copper reputed to be rich, and it is believed that these have attracted the French into Tunisian territory, for the forts and block-houses would be quite as effectual in preventing raids and cutting off the retreat of the marauders if they were placed on Algerian soil.

If this surmise is correct, the French will have to encroach but little further to bring the coveted territory within their lines.

I am, &c.,

G. H. HEAP.

No. 480.

Mr. Heap to Mr. Hunter.

No. 150.]

CONSULATE OF THE UNITED STATES,
Tunis, June 11, 1873. (Received July 9.)

SIR: The Bey has notified me officially in writing that the four persons apprehended for the murder of Mahmood Sennen, dragoman of the United States consular agent at Bizerta, have been tried and sentenced.

I am, &c.,

G. H. HEAP.

4.—TRIPOLI.

No. 481.

Mr. Vidal to Mr. Hunter.

No. 10.]

UNITED STATES CONSULATE,
Tripoli, (Barbary,) April 10, 1871. (Rec'd May 5.)

SIR: I have the honor to inform you that the steam-frigate *Guerriere*, Capt. Thomas H. Stevens, of the United States Navy, came from Malta to Tripoli on the 8th instant, at 7 o'clock a. m., and left yesterday afternoon at about 4 o'clock for Alexandria.

As the steamer which will bring this dispatch to Malta will leave in a few moments, I have no time to enter to-day into the details of that visit. Suffice it for the present to say that, thanks to my personal relations with the Pacha, the officers of the *Guerriere* were received by His Excellency in a more brilliant and flattering style than any war-vessel, either American or of any other navy, had ever been before. I took the opportunity of the presence of one of our steamers in the roadstead of Tripoli to request the Pacha to allow Capt. T. H. Stevens to take away the main anchor of the United States frigate *Philadelphia*, which, in the month of February, 1804, was taken and burned in the port of Tripoli by Lieutenant Decatur of our Navy. Not only did the Pacha grant my request, but he courteously added that he was making a present to our government of the eight thousand Turkish piastres which it cost to his government to raise that anchor from the bottom of the sea. In my next dispatch I will have the honor to give you more details in regard to the visit of the *Guerriere* and the anchor of the *Philadelphia*.

I have, &c.,

M. VIDAL.

No. 482.

Mr. Vidal to Mr. Hunter.

[Extract.]

No. 12.]

UNITED STATES CONSULATE,
Tripoli, (Barbary,) May 26, 1871. (Received July 19.)

SIR: I concluded my dispatch No. 10 with a promise to enter into a few details in regard to the visit of the frigate *Guerriere* to this port; but I had to examine, before writing this dispatch, a claim of \$20 against that vessel, of which I will say something further below.

In regard to the *Guerriere* itself I must say that had I received beforehand reliable information about its coming I would not have neglected that opportunity to ascertain from the government of the regency whether in its relations with the United States it is ruled by our treaties with the successive Pashas of Tripoli, or by those we made with the Porte. All the consuls here pretend that in spite of the acknowledged *suzeraineté* of the Ottoman government over Tripolitania, all the treaties of their respective governments with the former bashaws are still in force; but, strange to say, not one of my colleagues has yet been able to make

out a case to test the value of those pretensions, the merit of which I cannot judge, for I cannot yet find out on what written document they rest. Now, it is said in article xiii of our treaty of 1805 with Tripoli:

“On a vessel-of-war, belonging to the United States of America, anchoring before the city of Tripoli, the consul is to inform the bashaw of her arrival, and she shall be saluted with twenty-one guns, which she is to return in the same quantity or number.”

But Captain Stevens, who probably never heard of that article, saluted the forts the moment the frigate cast anchor; and the latter returned the salute, and so I lost the opportunity to test the willingness of the Pasha to abide by our treaty of 1805.

It was an unfortunate circumstance that the *Guerriere* should come to us on Good Friday, when all the flags of my colleagues were at half-mast. In consequence the usual honor of hoisting the colors was not paid her, either on that day or the next. * * *

It is usual for the commanding officer of a war-vessel visiting an eastern port to acknowledge the courtesy done him and his vessel by the foreign consuls who have hoisted their flags by calling at the various consulates. But in this case, as no flags were hoisted, no visit could be expected by my colleagues. However, to my great surprise, the Italian consul-general, dining lately at my house, assured me that the captain and I had been guilty of a breach of international etiquette; that we ought to have acknowledged the politeness of the consuls even when no politeness had been done; and that on that account he for one would never more hoist his flag for an American war-vessel, whether it was on Good Friday or not. As I could not see the virtue of that logic, he added, in a friendly manner, that in order to prove to me that I was wrong he would write to his government, and he was sure I would be disapproved by our State Department. Now, I candidly want to know, for my future information, whether the commanding officers of our war-vessels visiting eastern ports have to acknowledge by a personal call to foreign consuls a politeness which, through good or bad reason, has not been done them.

A few hours after my visit on board the *Guerriere*, I addressed to the Pasha a letter requesting him to appoint an hour for the reception of the United States officers, and I soon received an answer, the style of which is so eminently literary that the letter was probably written by his excellency himself, for he is one of the most elegant Turkish writers of the age.

I have the honor to send you, herewith inclosed, copy of my letter, marked No. 1, and copy of the Pasha's answer, with a free English translation, respectively marked 2 and 3.

In the evening of the same day I made arrangements with the director of foreign affairs to secure for our officers a reception of an extraordinary character. It is customary for the Pasha to receive official visits, either alone in his grand hall or in company with one or two of his household officers. But on this occasion, all the religious, military, and civil officers in Tripoli were ordered to be present in full uniform, and a military brass-band, with an array of about 500 soldiers, were on the wharf of the castle to receive us with all military honors when we landed from our boats. On the other hand, I had warned Captain Stevens that the reception would be exceptionally brilliant, and that for the good name of our country he and his officers should display as much gold lace as there would be to be seen in his excellency's retinue. I am happy to say that in this, as in other more important cases, our country was not outdone by foreigners; and, on the next day, as I was sitting

at the upper end of the grand hall, on the right-hand side of the Pasha, smoking my latakié and sipping my moka, it was a matter of no little pride to compare the long line of elegant and proud-looking young officers of the *Guerriere*, on our right, with the two or three dozens of dignified, gold-laced Turkish high dignitaries sitting on our left.

After the presentation of all the officers on both sides to one party and the other, and the usual compliments, I renewed verbally my request to the Pasha for the authorization to take away the anchor of the *Philadelphia*. His excellency was pleased to say, with many eastern compliments, which I will not report, that he was but too happy to be offered that opportunity to show his good feelings toward the United States of America. Therefore, would he not only give the asked-for authorization, but it was a real pleasure to him to make our Government a present of the sum of eight thousand Turkish piastres which his officers had spent on various occasions to have that same anchor dug up and carried from place to place, to be finally left on the wharf where it was now lying.

In regard to that matter, let me here say that Captain Stevens engaged, for ten dollars, a man with his lighter, to transport the anchor from the wharf to the *Guerriere*. But, as the man pretended to have a previous claim of twenty dollars for carrying the same anchor, some two or three years ago, from one place to another, Captain Stevens did not pay anything, but requested me to investigate the claim and settle it as I saw fit. I have done so, and as nothing was produced to my satisfaction to corroborate the allegations of the man, I paid him ten dollars only, promised for the use of his lighter by the crew of the *Guerriere*. Will you be kind enough to tell me to what Department I have to present that little extra bill?

About one hour after we left the palace, his excellency and most of his officers went on board a Turkish man-of-war stationed in our port, and were conveyed to the *Guerriere*, where they were received in a semi-regal style. It is unnecessary to say that they visited every nook of the vessel, and were highly pleased with everything they saw.

* * * * *

When the *Guerriere* visited this port the Turks, of Tripoli at least, had come to think and speak of America a good deal more than was their wont, and to consider our friendship as more desirable than that of any other nation. Hoping that they will live on in those sentiments, and that that piece of information will be well received by you,

I am, &c.,

M. VIDAL.

[Inclosure 1.—Translation.]

Mr. Vidal to the Pasha of Tripoli.

CONSULATE OF THE UNITED STATES OF AMERICA,
Tripoli, (Barbary,) April 7, 1871.

EXCELLENCY: I have the honor to inform you that Capt. Thomas H. Stevens, commanding officer of the steam-frigate *Guerriere*, of the American Navy, which arrived this morning at Tripoli, desires to pay you a visit, accompanied by the officers of his staff. His sojourn in this port having to be of very short duration, I would beg of you, if not inconvenient, to receive him to-morrow.

I will take the liberty, *apropos* of that visit, to remind your excellency that there are in the port of Tripoli a few remnants of the frigate *Philadelphia*, which was burnt down in 1804 by Lieutenant Decatur of the American Navy. The causes which brought

up a war between the United States of America and the Bashaw of Tripoli have ceased to exist for a long time, and to-day there is left in the hearts of men the remembrance only of a deed which owed its splendor as much to the gallant renown of the Tripolitans as to the bravery of the Americans.

Considering the friendly relations which to-day unite both countries, and which we may hope will last forever, and remembering the proofs of personal good-will which you have already given me, I will improve the opportunity of the arrival in this port of the *Guerriere* to request your excellency to allow Captain Stevens to collect the anchor and other remnants of the *Philadelphia* which may yet be in the harbor, to be sent to the museum of our naval school at Annapolis.

By granting me that favor you will give to the whole American people a proof of friendship to which the Government that I have the honor to represent will not, I am sure, remain indifferent.

I take this opportunity to renew to your excellency the assurance of the consideration with which I have the honor to be your very respectful servant,

M. VIDAL,
United States Consul.

His Excellency HALET PASHA,
Governor-General of the Regency of Tripoli and Barbary, &c.

[Inclosure 2.—Translation.]

The Pasha of Tripoli to Mr. Vidal.

VERY ILLUSTRIOUS SIR CONSUL: I have received the communication which you addressed me on the occasion of the arrival of the American frigate *Guerriere* in this port, to announce to me the official visit of her commanding officer and his staff, and to inform me, at the same time, that there is on one of our wharves an anchor formerly belonging to another American frigate which was totally lost in this port, and that on account of the excellent relations and the cordial *entente* existing between our governments that anchor could be restored to America.

Having the highest regard for the friendly feelings and the cordial *entente* by which my government and the one you represent are united, and for the maintenance of which I without ceasing pray the Most High, I feel it an honor to answer you that not only will I be most pleased to receive the visit of the American officers, but that I intend to pay it back in person on board their frigate.

About the anchor to which you allude, it is for my government and myself a real cause of happiness to be able to please you. Therefore I hasten to inform you that, according to your desire, I have given orders for the exportation and the transfer of said anchor, which probably at the moment I am writing is already on board the frigate.

To have realized your wishes is for me a happy opportunity. Please accept that anchor as a token of my friendship for you, and the graceful manner with which you accepted it is a new and pleasing proof of those friendly feelings which unite our respective governments. I esteem it a good fortune that my star has so directed it that I should be at the head of this government when occurred that memorable event.

HALET PASHA.

To the CONSUL of the *American Republic.*

No. 483.

Mr. Vidal to Mr. Hunter.

No. 26.]

UNITED STATES CONSULATE,

Tripoli, (Barbary,) December 28, 1872. (Rec'd Feb. 4, 1873.)

SIR: The slave-trade between the regency of Tripoli and Constantinople has always been a flourishing branch of exportation for this place; but lately, owing to the facility of travel, afforded by the creation of numerous lines of steamers running between the British island of Malta and the Turkish capital, and the establishment of three other

lines plying between that island and Tripoli, that trade has received a new impetus.

Shortly after my arrival at this post my attention was called to that infamous trade; but, in consequence of the difficulty every one experiences in obtaining reliable information from the Tripolitan custom-house on that subject, as well as the secrecy in which the slave-trade is carried on, it was for a long time quite impossible for me to send you any details on that subject. I am now happy to say that, thanks to a journey I made lately to Malta, and to a flying visit, my interpreter made to the same island, I am in a position to give you information which you may receive with interest.

The slaves exported from Tripoli come from that undefined region which stretches south of the Bachalick of Fezzan and the town of Murzuk, situated a little north of the 26th northern parallel. They speak a language which but few persons understand on the coast of Barbary; and mostly follow the Mussulman religion, with a considerable mixture of heathenish practices and savage superstitions. They greatly differ from the Guinea negroes whose type is so familiar to us. They are not of a shiny dark hue like the negroes of the New World, but of a very somber black complexion, very much in harmony with their unilluminated souls. They very seldom laugh; never smile; and their women can squat together for hours at a time without feeling the least inclination to chatter. Most of them are tall, slender, with remarkably meager limbs; and their women, even when they are past thirty years of age, show no tendency to obesity, as is the case with the Louisiana black women.

One who has not lived in Africa can have no exact idea of the extreme poverty, which probably from the first days of creation never ceased to scourge the aboriginal populations of that continent. Human beings who have the good luck to get plenty to eat once a week, are as few in Africa as those who go twenty-four hours without enjoying a full meal are scarce in America. Last winter, here in Tripoli, a few miles only from Malta and Sicily, people were literally dying with starvation on the public roads and near the gates of the city. There were a number of women and children who used to come every morning to our consulate, to receive a little piece of money, or small loaves of bran bread, which I used to have made on purpose for them, so that with the same expense I could relieve the pangs of a greater number. In the course of the season, I left the city, and when I came back and inquired for my beggars, judge of the shock that I received when I heard that all of them were dead. They were about thirty or forty. During that cruel winter it often happened that families from the interior, which had come to this famine-stricken country with a hope of finding a better place than their yet more cursed native sands, would offer me for sale their children at a price varying from six to fifteen dollars. I had then occasion to notice that they were more readily disposed to part with their girls than their sons. "We know," they would tell me, "that you will take good care of them; while, if they remain with us, they will surely starve with cold and hunger; it is only a question of hours. Moreover, the girls have to become slaves, sooner or later, of their husbands or some one else. If you buy them now, with the money they will fetch we will all live till we can find in the desert grass good to eat."

It is my opinion that misery alone and not war drives most young men into slavery; as for the slaves of the other sex there is very little difference, as far as condition, happiness, and freedom are concerned,

between the poor negro girl who is bought and resold four or five times ere she finds a home in Constantinople, and the fairest Caucasian wife of a Turkish high dignitary.

Here, in Tripoli, an adult girl, say from twelve to sixteen years of age, can fetch from twenty-four to forty dollars; of course, in their native country they will be considerably cheaper, for it takes forty days to go and come back from Tripoli to Fezzan. As the blacks are not considered to be subject to the Tripolitan government, while the large tract of Fezzan is a province of this regency, I conclude that they come from a more distant oasis. When we take in account the expense, pain, and risk incurred by the traders who import those wretched creatures across such a vast desert, we may well suppose that the first price of the latter did not amount to more than a silver piece of money for each one; may be a handful of dried dates, or three or four yards of cheap calico.

A few years ago the exportation of slaves from the coast of Barbary was not attended without difficulties and great outlay of money, on account of the scarcity of vessels trading between this regency and the Turkish empire. But nowadays, thanks to the many regular lines of steamers, which run regularly between Malta and Constantinople, that trade has received lately a great impetus. There are three lines of steamers connecting Tripoli with the Island of Malta; one belonging to British subjects, and the two other ones to Turks. The price of a ticket for third-class passengers on board those steamers varies from \$2.50 to \$5. There is not on those vessels the least pretext of accommodation for passengers of that class, and very little indeed for the more favored ones. Men, women, children, either Christian, Jewish, or Moslem, clean or unclean, sick or in good health, are huddled together on a small and dirty deck, exposed night and day, without any protection, to the chilly northern winds of the winter or the fierce rays of our African sun. The journey lasts from twenty-six to forty-eight hours.

My last trip to Malta was on board the *Raffaele*, a diminutive British steamer, on whose deck were crowded about one hundred passengers, thirty of whom were evidently slaves. When we cast anchor in the port of Valletta, an officer, whom I believe to be connected with the police department, came on board, and after perusing the list of passengers and their passports, commenced his examination of the black women. I must say that if the authorities of the island had wished to make a farce of the performance of a serious duty, they would have good reason to congratulate themselves on the selection of that official in this case. In the first place, not considering that these poor girls think it the greatest shame to show their faces to a man, and particularly to a Christian, he would squat to their level, as they were lying down on deck, look them boldly in the face, and ask them in a language they could not understand whether they had left their country freely, and would not rather go back to it? Of course most of them were too much frightened to answer, and those few who did proffer an answer, through an Arabian passenger, repeated merely the words told them by their companions. For the moment they had but one wish; it was to get rid as soon as possible, of that obtrusive, whiskered Nazareen, who was frightening them with his looks as much as with his swagger. As soon as those questions were asked, *pro forma*, eight or nine times in the crowd, the officer authorized all passengers to go ashore, and the only obstacle which might be thrown in the way of those human flesh importers was thus easily overcome.

There are in Malta two or three inns kept by African Jews, and specially devoted to Mussulman and Hebrew travelers, who consider it a great contamination to eat anything cooked with lard, or the meat of an animal killed by a Christian. Those inn-keepers know by a flag hoisted on the top of the cupola of the governor's palace when a steamer from the coast of Barbary is in sight. They hasten to the fort, take a boat, and when the steamer is in and the passengers allowed to land, they offer their services to those among the crowd whom their dresses show to be children of Abraham, or followers of Mohamet. The slave women hide their faces in their blankets; are taken down to one of the boats and brought to one of these public houses, where they are kept in a room, being very seldom allowed to go out about the city, until all arrangements are concluded to resume their journey to Constantinople. They may thus spend two or three days, a week even, in Malta without any one of the inhabitants ever interfering or having an opportunity to interfere with them; and, in the mean time, they may, and probably do, pass from the hands of one trader to those of another exporter.

* * * * *

There are six or seven lines of steamships, all of them British but one, which is Russian, running between Malta and Constantinople. The slave drovers do not find any difficulty to send their chattels to the end of their journey by one of those steamers. I was informed that the black girls imported from Tripoli to Turkey are sold, on the average, for two hundred dollars, leaving thus to the importer a very handsome margin for profit, after paying all expense.

I am, &c.,

M. VIDAL.

No. 484.

Mr. Vidal to Mr. Hunter.

No. 31.]

UNITED STATES CONSULATE,

Tripoli of Barbary, January 6, 1873. (Rec'd March 24.)

SIR: I have the honor to send you herewith inclosed, marked No. 1, A, (with its translation in English, B,) an article from the Italian newspaper, the *Malta Couriere Mercantile*, in regard to the slave traffic from Tripoli to Constantinople.

It is unnecessary for me to observe that the article from which ever pen it may proceed, is intended as a blind, acknowledging, as it does, the traffic when it cannot be concealed any longer, but giving a praiseworthy part to the Constantinople police. It may be that it suited the Turkish strategy of the rulers of Constantinople to free the ten slaves alluded to in that article and arrest their owners; but it is not the less true that the slave traffic in Constantinople is carried on by high and low people; that there are this day, perhaps, fifty thousand slaves or more in that capital, and that a thousand of these were brought from Tripoli to the full knowledge of the British consul, the Turkish authorities of the place, and with their own connivance.

I am, &c.,

M. VIDAL.

[Inclosure 1, B.—Translation.]

In spite of the efforts of the Constantinople police to prevent the slave traffic, it continues to be carried on with a perseverance worthy of a better cause. A short time ago another vessel left Tripoli of Barbary having on board twenty-five young slaves of both sexes to be sold in Smyrna and Constantinople. They succeeded in selling fifteen in Smyrna, where the authorities seemed to proceed with less severity than in the capital, and the vessel proceeded to Constantinople with the balance of its human cargo. But the police having vent of it, went on board and arrested the two dealers in human flesh, and brought the ten slaves found on board to the prefecture, where they received their emancipation papers. The authority will provide for their support until they can procure them a free and respectable position. Those Africans were brought to Constantinople, as it is alleged, by express order of a *cadi* just returned from Tripoli, where he was in charge of a judicial office. That man intended to keep them in Constantinople as slaves.

O. T.

 No. 485.

Mr. Vidal to Mr. Hunter.

[Extract.]

No. 34.]

 UNITED STATES CONSULATE,
Tripoli of Barbary, February 14, 1873. (Rec'd March 17.)

SIR: In connection with the subject of my dispatches Nos. 27 and 32 I have now the honor to transmit, herewith inclosed, (inclosure No. 1,) the translation of the extract of an article published seventeen months ago in the *Revue des Deux Mondes*, in regard to the work and regeneration undertaken in Bulgaria by agents of the New York Bible Society. While the energy, tact, and devotion displayed by those agents cannot fail to elicit praise from all who have seen them at work, it is nevertheless to be regretted that so much sterling worth should be wasted, as it were, in the midst of a population which will never repay them for their many self-imposed sacrifices. I will not say that the Bulgarian heart could be properly compared to a wayside or a stony place, but it is, at best, a thorny field where the most sanguine husbandman cannot reasonably hope to see the good seed thrive in proportion to his care.

Either commercially or from a political or religious point of view, the United States can never expect to gather anything from what they may sow in Bulgaria, which is far inland, and may be considered as the core of the Turkish Empire in Europe.

It would not be so on the coast of Africa south of Tripoli. There is the large population of the nomadic Touaregs, who belong to the white race, but are not descendants of the Arabic invaders. They appear to be a fraction of the same Berben race which is supposed to be autochthonic on the northern coast of the continent, and which, retreating before the invading flood of the Saracens, took refuge partly in the fortress of the Algerian Atlas, and partly in the Saharic desert.

Those Touaregs, thanks to their superior physical, intellectual, and moral qualities, have, as it were, monopolized the carrying trade of the whole Soudan; and what that trade amounts to Christian nations have no adequate idea, on account of the many obstacles which their traders have heretofore found on their way from the sea to the interior. As nothing but gold-dust, ivory, gum, and ostrich-feathers was ever imported from that vast, mysterious region, it was erroneously concluded that it does not, and cannot, produce anything else, while the truth is that it could export any kind of grain, as well as cotton, wool, a variety of beautiful or useful woods, minerals, and so forth; but, on account of their bulk,

those articles are never carried across a desert which it takes from forty to sixty days to cross on a camel.

The city of Kouka, capital of the state of Bornou, is the emporium of an immense trade, and the oasis of Ghât, where they hold every fall a most important fair, which lasts from September till November, is situated midway between Tripoli and Bornou. Merchants start from all sections of Africa to attend that fair. One may see gathered at Ghât more than 30,000 camels at a time, come from Egypt, the regency of Tripoli, Morocco, Timbuctoo, and the whole Soudan. The longest road to reach that country is by way of Algiers, and the shortest one by Tripoli, as it has been acknowledged by such competent *savans* as Dr. Barth, Messrs. Richardson, Overweg, Vogel, De Beurmann, Henry Duveyrier, Gerhard Rohlfs, the French expedition of 1862, and the much-lamented Miss Tinné. There are two ways to reach Soudan from Tripoli. The traveler can go in a straight line hence to Mourzouk in the pashalic of Fezzan, which belongs to this regency, and thus find himself at the threshold of the Soudan region; but that way, dotted with very few oases, is the more fatiguing of the two. It was taken, nevertheless, by Vogel, and much later by Gerhard Rohlfs. There is another way by Ghadamès and Ghât, which is much pleasanter, and was for that reason adopted in 1849 by Dr. Barth and his companions. Ghadamès belongs to this regency, and is the center of a very brisk trade with Soudan on one side and Tripoli on the other. At that place there is a branch line leading to Timbuctoo by way of Insalah. It was the road taken by Dr. Barth to reach Timbuctoo. As for that interesting youth in his teens, Henry Duveyrier, he started in 1859 from Algiers, went across the whole of Algeria back of the province of Constantine and Tunisia to Ghadamès, thence to Ghât and Mourzouk, and he soon afterward reached Tripoli. Two years later a semi-military and semi-scientific expedition, organized under the patronage of the governor-general of Algeria, made Tripoli its starting-point, passed by Ghadamès, hence repaired to the mysterious city of Tougourt, visited Biskra, one of the French outposts in Algeria, and arrived successfully at Algiers after making with the Touaregs a written treaty, by virtue of which the latter took the engagement to convoy and protect the French caravans on their way to and from Soudan.

As for the commercial, political, and religious interest presented by those populations, I would first state that their consumption of English and French printed goods, French little mirrors, and Venetian glass beads is enormous; but in return they could not heretofore export anything more bulky than elephant-tusks and ostrich-feathers.

From the Mediterranean Sea to the Touareg country all nations submit more or less practically, these to the rule of the Emperor of Morocco, those to that of the governor-general of Algeria; the ones to the Bey of Tunis, and the others to the Bashaw of Tripoli. But further south, say after crossing the twenty-sixth parallel back of Tripoli, and the thirty-second back of the other regencies, I am inclined to think that every tribe has its chief, known by the title of Scheikh or Sheriff. With the exception of the Touaregs and the Kabyles of the French Tell, who, as I already stated, belong to the white Berber race, and are the descendants of the classical Numids, Libyans, or Moors, all those Africans belonging either to the pure Melanesian class or the Negroid population. In regard to the latter they are, thanks to polygamy, scattered in plenty everywhere, and I don't think that there are among the million of inhabitants to be found in this regency, excluding, of course, the Jews as well as the Franks, one thousand men of pure Arabio

blood. Every variety of complexional dark hues is to be found among those negroid people, the same as is the case in our Southern States, with the exception that none of them, no matter how little negro blood they may have in their veins, have that fair complexion so general among the quadroons and octaroons of New Orleans.

Between the seventh and eleventh centuries the Moors, though greatly superior to the Arabs, could not resist the multitudinous invasion of the latter, and in the struggle they not only lost their autonomy and their language, but their religion too, the Touaregs not excepted, nor the negroes, with whose millions teem the interior of Africa. But the Koran creed, as understood by those ignorant people, is not what its founder meant it to be; for while they bow to Allah, they never fail, on every great occasion, to appeal to the intercession of heathenish evil geniuses. Either black or white the Mohamedans of this country are generally ignorant, indolent, dirty, cowardly, stupid, of a thievish and lying disposition, cringing before their Turkish rulers, and, in presence of Frankish consuls, hiding under an apparent abjection the deep hatred and ferocious contempt which they nurse at the bottom of their hearts for all Nazarenes.

I must not pass by unnoticed a very interesting portion of the population of the coast. I mean the Jews, who, until quite recently, were more relentlessly persecuted and downtrodden in these regencies than anywhere else in the world. It had come to such a pass that it is only about ten years ago that they were allowed to ride on donkeys, don the Frankish garments, and wear a fez cap without a black turban. There are in the city of Tripoli alone about five thousand children of Israel, who are distinguished among their townsfolks by their industry and peculiar speculative genius. Feeling now that they are powerfully protected by the Rothschilds and other lordly Jews of London, Paris, and Germany, they begin to see that they may soon become a power in the state. They make money, buy land, eschew the Moorish costume and the polygamous customs, learn European languages, send their sons to Europe in order to be entitled to consular protection, and will, in a short time, be the most influential portion of the population.

Among the Franks in Tripoli the Maltese are the most numerous; next to them, but at a great distance in point of numbers, come the Italians. Both Maltese and Italians are priest-ridden, ignorant, superstitious, and have pretty much the same defects of soul and mind as the Mohamedans. The Maltese are nevertheless a hard-working people; and were they better trained, could become the most interesting population in this country. There are in Tripoli five Franciscan monks from Italy, and eight sisters of charity from France; the ones and the others under the protection of the French consul-general, and supported by contributions from the faithful in France, but I never heard that they succeeded in converting one single Jew or Moslem to the Christian faith. The ladies of charity take care of the sick of all creeds, all races; keep a free school, where they give a pretty good kind of intellectual food. As for the monks, save that they say mass to the faithful, they are of no use to the Christians.

* * * * *

Having thus spoken of the people, I will in my next write as fully as is possible to do about the city of Tripoli and its port.

I am, &c.,

M. VIDAL.

[Inclosure—Translation.]

Extract.

* * * * *

The New York Bible Society came, moreover, to the assistance of that national revival. It first caused the Bible to be translated into Bulgarian, and that translation is now pretty well scattered through the country. Four missionaries from America live now in Andrianopolis; they much more aim to contribute to the moral and intellectual progress of the people than to the propagation of the doctrine of a particular sect, and for that reason they excite but little jealousy among the clergy. They may rather be likened to travelers who, being interested in the country, visit it with their families, and have at their disposal the pecuniary means to do good as they pass by.* Missions of that kind can pretend to a great influence. They already commence to publish books on education. At first they were subject to a certain degree of incertitude, for they had to learn the language to study the disposition of the people. That required a very long training. But the energy and practical activity of the Anglo-Saxon race are well known. The American missions that one meets everywhere in the East constitute the first intervention of the United States in that part of the world; they are very numerous.

"In the mean time the Washington cabinet established consulates in countries where they have to protect but very few commercial interests. For instance, it has, since 1867, its agents at Lyra and Santorin.(?) The very active part the American consuls played in the Candian revolution cannot yet be forgotten, nor that report which, though having very little foundation, obtained such an easy credence in Greece, about the purchase by the United States of an island in the Cyclades. The advance of the Americans in the Turkish Empire is yet but a slow one; and the Hellenic people would be in as great an error to think that in a short time that advance can be an auxiliary to their cause as would the Europeans to suppose that it is doomed soon to come to a full stop." (*Revue des Deux Mondes*, October 1, 1871. *Souvenir de la Roumélie*, by Mr. Albert Dumont.)

No. 486.

Mr. Vidal to Mr. Hunter.

[Extract.]

No. 35.]

U. S. CONSULATE AT TRIPOLI OF BARBARY,
February 19, 1873. (Received May 21.)

SIR: Were it as true as it is held to be true, that happy are the nations without a history, the Tripolitans—one of the most wretched people in the world—would be among the happiest nations. Their history is so little known that, although in olden times there were in their country powerful cities mentioned by geographers, the very locality of those cities cannot be ascertained; and nobody knows to-day to which three of those towns this region owes its name of Tripoli. That general ignorance in regard to the history of the country is so much the more surprising as this land lies in the very center of that antique civilization whose most famous seats were the great cities of Greece, Egypt, Sicily, and Carthage, and the other Phœnician sea-ports. While we know so much about these countries and their chief towns, all the records we have of the Tripolitans for the last twenty centuries could be written in as many words.

"Subjects in succession to the Romans, the Arabs, the Spaniards, the Malta knights, and the Turks, they lastly became semi-independent."

What the character of that half independence was, it has always baffled diplomats and historians to decide. From the 16th of October,

* They have a fixed salary of 7,000 francs, besides their traveling and all other expenses that they may incur. There is a great difference between that affluence and the penury of the Catholic missionaries.

1662, when a bassa of this kingdom made a treaty with Charles II, of England, to the 13th of August, 1831, date of the last convention between the French government and a Bey of Tripoli, this regency, whatever may be the meaning of that word, concluded treaties with nearly all the nations of Europe, without mentioning our own treaties of 1796 and 1805; and during those two centuries the Tripolitans were always at war with one Christian state or another, ours not excepted, without the Sultan of Constantinople ever interfering in those wars, or even doing so much as protesting against any of those treaties negotiated without his authorization, and in no case submitted to him for ratification.

Nevertheless the Ottoman Emperor was the real *de facto* and *de jure* sovereign of the regency.

"Though they acknowledge the supremacy of the Porte," wrote Molloy about the Tripoli pirates, "yet all the power of it cannot impose on them more than their own wills voluntarily consent to. * * * This Tunis and Tripoli, and their sister Algiers, do at this day (though nests of pirates) obtain the rights of legation."

In his treaty made with France in 1740 Sultan Mahmoud Khan I took the title of "Sovereign of the three great cities of Constantinople, Adrianople, and Broussa, as well as of Damascus; fragrance of Paradise, of Tripoli in Syria, of Egypt, &c.; of Africa, Barca; of Barbary Ethiopia, the strong places of Algiers, Tripoli, and Tunis."

Nor could it be alleged to-day that this was a vain title, as well as that of the sovereigns of England when they styled themselves Kings of France; or that of the respective Kings of Naples and Sardinia, who, for a long time, were the titular sovereigns of Cyprus and Jerusalem. Among the sixty-one countries, provinces, or cities mentioned by the Sultan in that treaty of 1740 as being under his sovereignty, there is not one that was not really at that time under his rule; and, strange as it may appear, when we think of the many wars and revolutions which have taken place during the last one hundred years, all of those countries, with the exception of Greece, Algiers, and Crimea only, are to this day in his possession.

In the first article of the treaty of 1801 between France and Yousseuf Pasha, Bey and Dey of Tripoli, the very same Bashaw with whom we had a war, it was stated that all capitulations heretofore agreed upon between France and the Grand Seignior, or which may be consented to by the ambassador of France sent expressly to the Porte, "will be exactly and sincerely kept and observed, without any direct or indirect contravention from either party." That condition alone would be sufficient to prove that the ruler of Tripoli, at the very moment he was entering into a treaty with a foreign government, acknowledged the supremacy of the Ottoman Sultan, and the right of the latter to negotiate treaties in behalf of the regency. Yousseuf's son, Sidi Ali, the last Bashaw who reigned in Tripoli, was not recognized as such by the representatives of foreign powers until an envoy from the Porte brought him the Sultan's firman of investiture. (Inclosure No. 1.)

Toward the end of the last century the grandfather of that Sidi Ali—another Bashaw of that Caramanli family, which, having ruled over Tripoli for about two centuries, were considered by the inhabitants as Arabs more than Turks*—wishing to rid the country of all the

* The proper spelling of the name of that family is *Caramanli*, and not *Caramanri* as it was written in nearly all the dispatches of our consuls to the State Department. The Caramanli were originally from Caramania. The ending *li* in Turkish corresponds in this case to the ending *er* in such English words as *Vermont*, *New Yorker*, *Britisher*.

Osmanli it contained, hit on a very ingenious plan, which was, after him, resorted to by an Egyptian ruler against the Mamelukes. Having invited to a night banquet all the Turkish officials, civil and military, then in the regency, he had men of his own lying in wait for them in a long and somber corridor of the seraglio, which leads from the first entrance to the inside yard. As the unsuspecting guests came in one by one, they were pounced upon by the Bashaw's men, dragged to dark adjoining cells, and quietly murdered! The next morning when the inhabitants awoke there was nothing changed in Tripoli; only there were in the regency about a hundred Turkish gentlemen missing. That Bashaw was not so happy with his family as he might have expected, considering to what fearful extremity he had gone for their benefit. He had three sons, the youngest of whom was a real cub, not unworthy the bloody den where he had breathed his first. When a little over twenty years of age that prince had a quarrel with his eldest brother, of whom he appears to have been very jealous, and for a long time he would not speak to him; but on a fine morning he repaired to his mother's private apartments, protesting of his great desire to have a reconciliation with his brother. The poor unsuspecting lady sent for her other son, and then, as they were sitting, the three on the same sofa, the heir apparent between the two other ones, interchanging words of friendship, and peace, and happiness, the young monster sprang all of a sudden closer to his brother and stabbed him right in the heart, killing him instantly.

A few days later the young fratricide, who had fled immediately after the commission of his crime, repaired with a respectable number of followers before the walls of Tripoli, and had actually the hardihood to besiege in the seraglio his father and his own brother Ahmet, who by the death of the eldest son had become heir to the crown. For want of heavy artillery on either side that siege was protracted for a very long time; and while hostilities were going on, an Ottoman kapoudan passing at the head of a squadron not far from these shores, heard of that civil war, sailed for Tripoli, took the city by surprise,* and compelled the old Bashaw and his reconciled sons to flee together to the Tunisian regency. Thus the eighteenth century ended at Tripoli in a grand tableau of horrors, plunders, slaughters, pestilence, and famine.

But in the course of time, the Capitan Pasha and his Arnaut soldiers

* The port of Tripoli has, like those of Messina, in Sicily, and Toronto, in Upper Canada, the shape of a scythe, formed by a long and narrow strip of land protruding from the main shore at an angle of less than 45 degrees. It is across that strip of land that the Turkish kapoudan, being unable to pass through the mouth of the port, which he found too well protected by the guns of the seraglio, caused a number of large boats to be dragged during the night and launched in the port. Early the next morning his men were enabled to go in those boats to the very foot of the castle, where they found a postern guarded by a handful of men, who, expecting no attack from that quarter, were easily routed, and by that means the seraglio was taken by the Turks ere its inmates were aware of an attack.

It is not a little interesting to know that on two previous occasions the Turks had had recourse to a similar stratagem; once with the greatest success, and the second time with an effect that very nearly secured victory to them. In 1453 Sultan Mahammed, who was besieging Constantinople, caused seventy vessels of his fleet to be transported during one single night across the six miles of land which divide, back of the city, the Marmora sea from the port of *or Corne d'or*; and by that means he could attack the place on its defenseless side, and take possession of it.

In 1565 Mustafa Pasha, grand vizier of Sultan Suleiman, repeated the same maneuver while he was besieging Malta with 40,000 men. He had his boats, then lying in the port named Marsamuscetto, drawn across the neck of land which separates that port from the great harbor, and had them launched again in that part of the latter now called the Marsa. In both instances it was exactly as if an army besieging New York City from the Long Island side had their boats carried from the East to the North Rivers across the section of the city north of the Central Park.

were expelled, and the young Caramanli princes, Ahmet and Youssuf, were put again in possession of what they considered to be their legitimate throne. Ahmet, who was of an easy nature, had consented for peace's sake to share his power with his brother. Fearing, however, the jealousy and plotting genius of his royal partner, he would ever follow him everywhere as faithfully as his shadow. But on a certain occasion when they were returning together from a hunting excursion in the mountains back of Tripoli, Youssuf, who was mounted on a very swift horse, ran with all possible speed to the city. He arrived long before his brother, and when Ahmet reached the walls he found the gate shut; and on the top of it there was his brother, who, addressing him in a sneering manner, said: "You can, if you list, turn the head of your cattle to the east, and go as far as Derna, there to reign as a quiet, unambitious Pasha." Ahmet, being probably of opinion that it was better for him to be first in Derna than second in Tripoli, took his brother's advice. That Ahmet was *a dead weight*, as it was forcibly expressed by Mr. John Payne, the United States Secretary at this post in 1809. Thus, thanks to a heinous crime and a vast amount of deception, Youssuf became at last sole ruler of the regency. That is the same Bashaw with whom the United States had a war in 1804, and for whose brother Ahmet's sake a handful of men, headed by our gallant General William Eaton, went on foot from Egypt to Derna, across a desert of five hundred miles, and took that fortress by storm, on the 27th of April, 1805; a success which compelled Youssuf to make with the American nation a treaty which is still in force.

Twenty-seven years after the signing of that treaty, Youssuf, who had proved a cruel, though at first an energetic and able ruler, had by degrees lost most of his best points, while his bad qualities had in the mean time grown with great luxuriance. His eldest son had already rebelled against him; but, being unsuccessful, he was sent to exile, and died in some out-of-the-way place in Upper Egypt.

In 1832 the English government, which had a reason of their own (which I will explain another time) to bind with stronger ties this regency with the Turkish Empire, set up against Youssuf a claim of \$200,000 for damages inflicted on their subjects.

To say the truth, this very day, when the British population of Tripoli is ten times greater than it was forty years ago, I don't think that the whole amount of real and personal property owned by them all would be the fourth part of that figure. The Pasha, who had nearly exhausted his means in a recent war against insurgents, could not, of course, pay the whole amount in the extremely short lapse of time given him by the British consul. Accordingly a British squadron came to Tripoli to support England's pretension. Then, by the advice of the French agent, Youssuf abdicated on the 12th of April, 1832, in favor of his son, Sidi Ali Bey, who was, it appears, a very unpopular man. But that same day quite a young man, Sidi I Mohammed, an offspring of that son of the retiring Bashaw who had died in exile, bravely took up arms against his grandfather and his uncle, and with a large army of volunteers commenced the siege of Tripoli, exactly as Youssuf had in his youth besieged his father and brother. That second siege lasted very nearly three years. While the civil war was raging, the United States consul at Tripoli, whose sympathies were rather enlisted on the side of Sidi I Mohammed, and who had been grossly insulted and threatened by the sicaries of Sidi Ali Bey, thought it more prudent to repair to Malta, where he remained until the war was over. In 1834 the Constantinople Sultan sent to Ali Bashaw the firman of investiture; but the people

would not obey it. Strange enough, Tripolitan history is ever repeating itself. That second siege ended exactly like the first, by the successful interference of the Turks. A Grand Vizier, sent over with vessels and soldiers from Constantinople, took possession of the city, thanks to a kind of diplomacy which is greatly admired in these Levantine countries. While he was giving out to Sidi Ali's friends that he had come to support their party, he was all the time hinting underhanded to Sidi I Mohammed's admirers that all his strength would be thrown on their side of the scales. Ali Bashaw was invited to go on board the admiral's vessel to hear the reading of the firman by which Sultan Mahmoud II invested him a second time with regal power. But when the ceremony was over, and he expressed his desire to go ashore, they informed him that he was a prisoner; and that was the last ever heard of him. All his immense riches were confiscated. This event took place on the 28th of May, 1835. On that same day the vizier went to the seraglio, had the Sultan's firman appointing him Pasha of the Regency read to the population, and ordered the gates of the city to be thrown open to the besiegers. The latter had no objection to submit to the new ruler, for if they had rebelled, it was not that they loved I Mohammed in particular, but that they hated Ali the more. I Mohammed, seeing himself deserted, went to the desert and shot himself dead.

On the 2d of June next the commander-in-chief of the Turkish forces sent to the representatives of Christian powers at Tripoli a letter-circular, a copy of which I herewith inclose, (No. 2,) to inform them of his appointment by Sultan Mahmoud II. Nevertheless the treaties which those foreign governments had with the regency of Tripoli continued to be in force; and until now they, and not those with the Porte, have regulated in this regency the relations between Franks and Moors. Those among the consuls who were *envoyés*, and had presented letters of credence to the former Bashaw, continued to be considered as political agents.

But if the diplomatic relations between the new Tripolitan ruler and the Christian governments remained quite unchanged, it was not so with the relations between the regency and the Porte. From that day all the administration of the land became as much centralized in Constantinople as that of the United States custom-house, internal revenue, or post-offices is centralized at Washington; all the judges and custom-house officers are Osmanli, sent from the capital; the six or seven thousand soldiers garrisoned in the regency are Ottomans too; the Constantinople Osmanli idiom has long been substituted to the Arabic language for all official business; the only Arab office-holder in Tripoli is the *alcalde* or *scheick elbelad*, appointed by the Pasha governor; and the latter, deprived, of course, of the treaty-making power, is a mere agent, with no more administrative power than is given to the prefects who administer the eighty-seven departments of France, or the sixty-eight *province* of Italy.

The Turkish Empire is composed, as the Department knows, of three classes of countries. There are, in the first place, twenty-nine provinces under the immediate rule of the Constantinople Divan. Most of those twenty-nine provinces are *elayets*; others, *vilayets*, *mutessarifliks*, or *kaïmakamliks*. At the head of the administration of each province stands a governor-general, named *vali*, or *mutessarif*, or *kaïmakan*, appointed by the grand vizier, and under the immediate control of the Constantinople cabinet for every possible transaction. In the second class we find states not administered by the Sultan's Divan, but to a certain extent acknowledging the supervising power of the grand vizier.

Lastly, there are countries which, though nominally and *de jure* the Sultan's possessions, are in reality, and for all practical purposes, quite independent of the Ottoman government.

To that third class belong Moldavia, Dalmatia, Serbia, and Montenegro; to the second, Egypt and Tunisia; and to the first, the *eyalets* of Candia, Roumilia, Inina, Salonica, Bagdad, Trebizond, Yemen, the Mediterranean Isles, &c., the city of Constantinople, the *kïmakamlık* of Samos, the *mutessarifliks* of Cyprus and Sibân; the *vilayets* of Adrianople, Danube, Croatia, Alep, *Taraboussi Gharb*, (which means Tripoli of Barbary,) &c. (Inclosure No. 3.)

Before the change which took place in 1835 this regency could not have found its place in any of the three preceding divisions, for it had the treaty-making power and the full privilege of legation, a power which is not actually enjoyed by any of the countries I have mentioned in this paragraph, (Roumania, Egypt, and Tunis not excepted,) as I will explain in another dispatch devoted to the regencies.

I could not give you the list of the twenty or thirty Pashas appointed since 1835 to administer this country. The last five of them were the Pashas Mahmoud, Ali Riza, Halet, Mohammed Reschid, and Ali Riza again. Mahmoud Pasha, assisted by a Tripolitan Moor, who was sheik-et-belade, or chief of the city, made here an immense fortune, thanks to which he could, on his leaving this place, secure the appointment of secretary of the navy at Constantinople. Ali Riza, having the same wish to grow rich, but not Mahmoud's ability, the people made, in 1870, a peaceful but expressive demonstration against him and the sheikh. Both were removed from office. The next vali was Halet Pasha, a very good man, with whom I was on quite friendly terms, and who authorized me to ship on board the *Guerriere* the anchor of the *Philadelphia*. He was offered a large amount of money if he would not prosecute the former sheikh of the city, but he declined the offer, had the Moor arrested and sent to Constantinople. When the prisoner arrived at the capital he found, to his agreeable surprise, a great change in the political scene. His friend Mahmoud had, thanks to a clever use of his riches, succeeded the lamented Ali Pasha as Grand Vizier. Of course his highness freed the sheikh and removed from office Halet Pasha, who retired, leaving behind him a good reputation, bitter enemies, and debts, which he has since paid. Next came an old gentleman who remained with us but a few months, and was then appointed vali of the holy cities; and now we have Ali Riza Pasha again, and the old shiekh, though no longer in office, is a power behind the throne.

When the Caramanli dynasty fell all the European governments represented in this country, while they insisted on their right to maintain in force their treaties with the old bashaws, considered as quite unnecessary to accredit diplomatic agents near a seraglio which had henceforth no authority to conclude anything, but whose duty is, on the contrary, to refer every letter and document and report every political act, administrative transaction, and judiciary or police case, the very events of every day public life, to Constantinople, for advice, decision, sanction, or instruction. For that reason they either recalled their agents, or, when they had occasion to appoint new ones, they sent mere consuls without any diplomatic character.

The Russian, Swedish, and Danish consulates-general at Tripoli were closed soon after 1835. Austria had as late as 1846 a general agent in the regency, but now its consulate is in charge of an Italian shop-keeper, who is at the same time consul for Belgium and for Germany too. Spain was represented here as late as 1846 by a consul-general chargé d'affaires,

but subsequently the office was left with one vice-consul only, and now a Greek Ottoman subject, who was the firman's interpreter, has it in charge, with the title of deputy vice-consul. The French had in Tripoli a consul-general chargé d'affaires in 1845. Then only that agent dropped the second half of his title.

For a very long time the Minister des Affaires Etrangères entertained the idea of reducing this post to a mere consulate, and in 1870 it was in fact a consulate-general with a consul at its head; but since their last unfortunate war they have sent hither a consul-general, fearing that the Algerines could interpret that reduction of a French post on the African coast as a sign of decadency.

I cannot state at what time the Dutch had no longer a diplomatic agent in this regency.

* * * * *

In 1860 the consulates-general of Two Sicilies, Tuscany, and Sardinia were consolidated into one office, with a consul at the head, but five or six years ago the consul received the honorary title of consul-general, on account, I suppose, of the great number of Italians who are here; so that when I arrived in Tripoli I found a consul in charge of the French consulate-general and a consul-general in charge of the Italian consulate. These anomalies are happily unknown in our administration. For a long time the British kept at Tripoli the same diplomatic agent whom they had under the old Bashaw. When he died, in 1849 or '50, his successor somewhat modified his title, and was known as consul-general chargé d'affaires. Shortly after came another one, who was consul-general only. The British subjects here are the most numerous Frankish colony.

The United States Government is the only one whose representative comes here with a letter of credence.

Judge, sir, how indignant and mortified I was when I made the discovery that the Pasha to whom I had presented a letter signed by the chief of our government, and in which that Ottoman functionary was addressed as a highness, was nothing more than a second-class office-holder, who receives the complimentary title of excellency only, (a title which, in these Levantine and Italian-speaking countries, does not signify much,) and who shortly after was removed from office at the mere caprice of the Grand Vizier. In 1848 the State Department determined to reduce this consulate, (inclosure No. 4,) but I could not find out from the perusal of the old papers in the archives of this office the reason why it was ultimately decided to maintain the post on its former footing.

In regard to the capitulation, I must state that the European powers, being unwilling to have the validity of their treaties with the Bashaws brought to a test, have generally abstained, since 1835, from sending their men-of-war to this point. The Department knows that, in virtue of the old treaties, the Tripoli forts have to salute the vessels of Christian navies first, while it is the reverse according to the treaties with the Porte.

During the Crimean war, or at the end of it, England and France, having at that time nothing to refuse to their weak and therefore petted ally, made with Turkey a convention by which their treaties with the Porte were to be applied to all the Turkish provinces.

I beg to state that I never read that convention, nor ever heard of it, until quite recently. In the summer of 1871 the British government had another convention with Turkey, by which the former took the engagement to consider their treaties with this regency as absolute as soon as all the other Christian powers would have made a similar convention.

That document was published, but European diplomats and consuls in eastern countries are generally so disinclined to assist their colleagues in acquiring official information that I could not get a copy of it.

Lastly, I read quite recently in an Italian newspaper that the ministers of France, Great Britain, and Italy have just signed another convention with the Ottoman secretary of foreign affairs, by virtue of which the subjects of those three Christian powers in Tripoli will be amenable to the regular courts of the country, and no longer to their respective consular courts, when they stand as defendants in civil law suits or criminal prosecutions, wherein the plaintiffs, prosecutors, or victims are Ottoman subjects. If such be the fact, the former treaties with this regency are practically put to an end, so far as those three Christian nations are concerned. But I must say that, to this day, the new convention has not yet been enforced.

Having thus shown that, since 1835, the three United States consuls appointed to this office, Messrs. Zaines, Porter, and myself were the only consuls coming here with letters of credence from the head of the Government, it is, I think, unnecessary to show the expediency of having here but an ordinary agent, without any kind of ministerial character. But such being the case, is it proper to maintain, at great expense, an agent in a place where there are no American citizens, and whither, to my knowledge, no American merchant-vessels ever went for the last thirty years? In all respects this office is a perfect sinecure, as it would be in Damascus or Bagdad, and there is no possible prospect it can ever be made useful, except the Government would decide to act in conformity with my dispatch No. 32.

But it does not follow that we should give up our treaties with the Bashaws as easily as England, France, and Italy have just done; it will be, on the contrary, the purpose of my next dispatch to prove—1st, that we have a perfect right to keep those treaties in force; 2d, that it is our interest to do so; and 3d, that as long as there is a United States consul at Tripoli he ought to be invested with that ministerial character which the letter of credence presented by my predecessors and myself have necessarily given us in the eyes of the world.

I am, &c.,

M. VIDAL.

[Inclosure 1.—Extract.]

* * * In the political affairs of Tripoli, I have the honor to inform you of the arrival, during last month, in a brig of war, of an envoy from the Sublime Porte, bearing a firman from the Grand Seignior, recognizing Sidi Ali as Bashaw of Tripoli, which was announced to the representatives of foreign powers at Tripoli on the 25th ultimo, to which the French consul-general replied by presenting credentials from his government, accrediting him chargé d'affaires near His Highness, which will probably be soon followed by the recognition of those European powers who have availed themselves of the stipulations of the French treaty. The English consul awaits the instructions of his government, which, from the reports in circulation, I am disposed to believe will also be to recognize Sidi Ali. * * *

D. SMITH McCAULEY.

(Dispatch No. 21 of the United States consul at Tripoli of Barbary, dated Malta, October 27, 1834.)

[Inclosure 2.—Translation.]

Letter circular addressed by the Vizier, Esseit Mustafá Nedgjib, Bashaw, to the representatives of foreign powers at Tripoli of Barbary.

Esseit Mustafá, by the grace of God Pasha, lieutenant-general of the regular troops, Vizier of the Sublime Ottoman Porte, by the same sent, in charge of extraordinary powers. (L. S.)

By these presents we advise you of our arrival here, furnished with orders of the Sublime Porte to put an end to the disorders which have for too long a time afflicted

this country, and to govern the same, with all its dependencies, during the pleasure of our august sovereign and master, Sultan Mahmoud.

It shall, therefore, be to us that you will have to address yourselves on all occasions; and be persuaded, on your part, that we shall be ever disposed to concur in maintaining those friendly relations which happily exist between the Sublime Porte and the Christian powers.

Given at our castle, this 2d day of June, 1835.

To the most illustrious the representatives of the Christian powers resident at Tripoli.

[Inclosure 3.]

Titles of the Tripolitan rulers.

Alluding to the Barbary regencies, Robert Phillimore, in his Commentaries upon International Law, wrote about Tripoli:

"It is, properly speaking, not a Barbary state under the protection of the Porte, but a province of the Porte, in the same condition and category as Bagdad, or any other province of the Ottoman power. The Bey is appointed and removed at the pleasure of the Sultan; nevertheless, European powers have entered into treaties with a Bey as an independent power, and have sought redress from him in the first instance for injuries inflicted on their subjects."

At the foot of the same page the learned author added the following note: "The Bey styles himself in these treaties, *Bey, gouverneur et capitaine-general de la cité et royaume or régence de Tripoli.*"

The publicist confounded in this instance two very distinct periods, the one preceding the fall of Ali Bashaw, and the present period, commencing with the arrival of the Turkish Pashas at Tripoli in 1835. It is correct to state that since that event took place, Tripoli is in the same condition and category as Bagdad or any other Ottoman province; but it would be wrong to think that any European power has, since 1835, ever entered into treaties with a Pasha-Vali or governor-general of the Tripolitan province; or that any of its governors has taken the title of Bey.

On the other hand, it is right to say that foreign powers have made treaties with Tripoli before 1835, but then the rulers of the regency, *Bashaws, Beys, or Deys*, never but once styled themselves *gouverneurs* or *capitaines-généraux de Tripoli*, at least as far as I could ascertain; and it is probable that the only instance I could find was the result of a misinterpretation; for the treaty in which I discovered it bears other internal proofs of a very loose translation.

Here is the list of all the treaties made by the Kings of England with Tripoli, and the titles the rulers of the regency took in all those treaties:

October 18, 1662. The Most Excellent Osman Bassa, and the people of the noble city and kingdom of Tripoli.

March 5, 1675-6. The Most Illustrious Lords Halil Bashaw, Ibraim Dey, Aga, Divan, and governors of the city and kingdom of Tripoli.

May 1, 1676. (Ditto, except that Mustapha, Grand Seignior, as Dey, in lieu of Ibraim.)

October 11, 1694. The Most Illustrious Lords the Bassa, Dey, Aga, and Divan, of the city and kingdom of Tripoli.

July 19, 1716. The Most Excellent Lords Mamet Bey, Isouf Dey, Siaban Rei, the Divan, and the rest of the officers and people of the city and kingdom of Tripoli.

September 19, 1751. The Most Excellent and Illustrious Lords Mohammed Bashaw, Grimali Dey, governor and captain-general; Seedy Ali Bey, Seedy Hassan Kiaja, the Divan, and all the officers, soldiers, and people of the noble city and kingdom of Tripoli in Barbary.

July 22, 1762. The Most Excellent and Illustrious Lord Ally Bashaw, Bey, &c.

May 10, 1812. His Highness Sidi Yuseff Caramanli, Bashaw, Bey, governor and captain-general of the city and kingdom of Tripoli in the west.

April 29, 1816. His Highness Sidi Yusef Caramanli, Bashaw and Bey of the regency of Tripoli and its dependencies in Barbary.

French Treaty.

June, 1801. Son Excellence le Très Illustre Youssouf Pacha, Bey et Dey, le Divan, et la milice du royaume de Tripoli en Barbarie.

American Treaties.

November 4, 1796. Youssouf Bashaw; Mohamet Bey; Mamet, treasurer; Amet, minister of marine; Amet, chamberlain; Ally, chief of the divan; Soliman Kaya; Galil, general of the troops; Mahomet, commandant of the city; Mamet, secretary.

June 4, 1805. Yusuf Caramanli Bashaw; Mohamet Caramanli Bey; Mohamet Bey; Mohamet Kaya; Hamet, rais de marine; Mohamet Degheis, first minister; Selah, aga

of the divan; Selim Samadar; Murat, dulartile; Murat, rais admiral; Soliman Kaya; Abdallah Bassaga; Mahamet Scheik el Beladei; Ali Ben Diab, first secretary.

[Inclosure 4.]

Mr. McCauley to Mr. Hyatt.

CONSULATE OF THE UNITED STATES OF AMERICA,
Tripoli, Barbary, October 15, 1848.

DEAR SIR: I have the pleasure to acknowledge the receipt of your note of the first of August last, informing me of your appointment as consul-general for the empire of Morocco.

I beg you will accept my congratulations on your safe arrival at Tangier, and my best wishes that your residence may prove a happy and an agreeable one; and it will afford me pleasure to correspond with you, particularly when the interest of the public service may require an interchange of communications.

I had the honor to receive your card when at the Astor House, in New York, in March, on the eve of my departure for England, on my return here. I regretted exceedingly that the busy preparations for the voyage did not permit me to seek out your address for the pleasure of having been able to make your personal acquaintance.

A few days ago I received, by private letter from Washington, the news of my appointment and confirmation as consul-general to Egypt, *the Government having decided to reduce this consulate.*

Respectfully, &c.,

D. S. McCAULEY.

No. 487.

Mr. Vidal to Mr. Hunter.

No. 36.]

UNITED STATES CONSULATE,
At Tripoli of Barbary, February 25, 1873.

SIR: I concluded my last dispatch with a promise to examine the value to the United States of the treaties made with this regency. For that purpose I must first show what is the main distinction between the treaties made with Tripoli and the capitulations between Christian governments and the Porte.

The general rule in Constantinople and the other provinces of the Ottoman Empire is that whenever a Frank stands as defendant or accused in a civil lawsuit or a criminal prosecution with an Ottoman subject as plaintiff or prosecutor, the *lex loci* is to be applied and his case to be tried by the Turkish courts of justice. When I thus make a general statement I am well aware that the United States give quite a different interpretation to Article IV of the treaty of 1831 with the Porte, but as their pretention is considered, though erroneously, by the Turkish government as an exceptional and unfounded one, I will set it aside for the present and allude to the general rule only.

In Tripoli, on the contrary, Franks, when sued for debts by Turks or Moors, or prosecuted for wounding or killing an Ottoman subject, enjoy the privilege of having their case tried by their respective consuls, and that privilege is secured to them, as it is candidly believed and unanimously alleged, by treaties. In the existence of that franchise we find one of the main causes of the anxiety of the Turkish government to see those treaties nullified, while for that same motive, as well as others of a political character, European governments have so generally objected to consider them as obsolete in spite of the change effected in 1835.

Well, extraordinary as it may seem, there is not in any of the treaties made by Christian governments with the old Bashaws of this regency

one single article securing to Franks in this country such a peculiar privilege.

“Ces traités ne sont pas ce que la Porte pense ;
L'ignorance du Turc fait toute leur puissance.”

Though my residence in Tripoli began more than thirty months ago I could not yet succeed in getting a copy of all the treaties made by European governments with the regency. All my colleagues here and their employés were born and brought up among Arabs, or Turks, and they share of course many of the characteristics which distinguish a Mohammedan from a European functionary, and the most peculiar of which is a marked aversion to impart to others any kind of positive information. The unconscious foundation for that general dislike is probably that knowledge being power there is no wisdom in giving to a man information which he may eventually use against the informer himself. Be that as it may, it is only through perseverance that I succeeded at last in getting copies of the treaties made by France and Great Britain with this regency. But those two documents were sufficient for my purpose. The extraordinary privilege enjoyed by Franks in Tripoli being supposed, in a vague manner, to be derived by a treaty made by one or the other of those two European powers, it may be seen by referring to inclosure No. 1 that those pretensions are quite unfounded, that the Ottoman government, in laboring so long to have those obnoxious treaties removed from the way of their courts of justice, have been all the time fighting against windmills, and that the British, French, and Italian governments, when consenting at last to sign the recent convention I alluded to in my last dispatch, have in reality signed away no legitimate right. They have reluctantly and with ill grace abandoned what was in fact a usurped privilege.

How did such an abuse come to be so firmly rooted in the relations between consuls and Osmanli officials? I cannot explain unless it were that, in 1835, when the Ottomans took possession of the Regency, all the papers in the seraglio were destroyed and the consuls had then a fair field for their most unfounded and abnormal pretensions in their official dealings with the new comers. However, after a practice of 38 years, those privileges enjoyed by Franks in this country are candidly held by all, consuls and European residents, Osmanli, pashas, judges, and Moorish people, as a *de jure* right as well as a *de facto* prerogative. There was, therefore, a general wail among the European inhabitants of the country when the news came recently that France, Great Britain, and Italy, had agreed to consider as obsolete their old treaties with this Regency. But now that this usurpation has been given up by the three powers most in position to prop it up, I am inclined to think that the other European governments will not long continue to fight for its maintenance.

I will respectfully express the opinion that it would be better policy for the United States not to imitate the example just set by France, Great Britain, and Italy. Not that I would advise the Department to maintain the old treaties with Tripoli for the sole sake of the abuse which has sprouted under their shade. That would not be an honorable course, and besides Article IV of our treaty of 1831 with the Porte, with the construction we give it, is as advantageous to the United States as can be the abusive practice which has by degrees come to take root in the official relations between Franks and Moors at Tripoli. But my desire to see those treaties kept alive springs from a political consideration.

There are no American citizens in this Regency, and it matters little to

us by whom are to be tried those foreigners who strike or kill a Moor, but such eventualities may take place in the course of years, when it would be a positive advantage to the American nation to insist that this Regency is no integral part of the Ottoman Empire. The signers of the treaty of Paris guaranteed the integrity of that empire, but in 1856 they all considered this Regency no part of Turkey proper, and were still maintaining the old treaties with Tripoli. The United States could go to war to-morrow with this Regency without fairly opening the door to the armed intervention of those European powers. To that and many other considerations I will say that the United States Government can gain nothing by abandoning those treaties, loses nothing by maintaining them, and might one day be sorry for having canceled them. And now comes the question: Can we honorably and consistently maintain them? The British, French, and Italian diplomatists who have so long exerted themselves in their behalf will answer *no*, of course, but the Department is aware that it is no part of those gentlemen's professions to consider consistency.

* It is argued, for instance, that, Turkey having conquered Tripoli in 1835, all the treaties between the latter and foreign powers come naturally to an end, as was the case when the French conquered Algiers, the Prussians Hanover, the Germans Alsace-Lorraine, the Italians the Two Sicilies, &c. In reply to that statement, I will prove that the regencies, being under the suzerainty of the Ottoman Padishah at the very time they were, with his consent, treating with Christian powers, he could not conquer them, as they were at all times his own.

Secondly, I will show that, even had the Padishah's forces conquered Tripoli in 1835, the similitude between the case of that Regency and the other conquered countries, such as Algiers, Hanover, &c., is quite an erroneous one.

I. To the proofs in support of my first assertion, which are contained in my dispatch No. 35, I will to-day add the following ones:

1. In their treaties with Christian nations the Constantinople Sultans invariably referred to the Barbary States as belonging to them, and the Christian contracting parties to those treaties willingly accepted as right the assumption of that Ottoman suzerainty. To prove it I will cite (inclosure No. 2) Articles 11 and 81 of the treaty of 1740 between France and the Porte.

In the course of the first quarter of the sixteenth century a number of Frenchmen from Marseilles obtained from Sultan Selim Khan I a grant of the land bordering on the Gulf of Stora, on either side of the boundary-line between Algiers and Tunis, and on that grant they founded a colony which, after a long succession of good luck and bad fortune, became very well known under the name of *concessions d'Afrique*, with the *Bastion de France* as the chief seat of the colonial government. The ruling authorities at Algiers and Tunis never uttered a word against the assumption of the power exercised in that case by the Constantinople Sultan. Far from it, both Algiers and Tunis ratified those grants by several treaties with France, among which I will mention those of 1604 and 1820 with Algiers, and that of 1742 with Tunis, (inclosure No. 3.)

2. Nor can we wonder that it should be so, when we bear in mind that all the treaties known as capitulations between the Porte and the Franks were admitted by the rulers of the regencies to be binding on them too, (inclosure No. 4.)

3. I stated in my last dispatch that, in 1832, the Bashaw of Tripoli, though called to the throne by his own father, was not recognized by

the representatives of foreign powers until he received the firman of investiture from the Grand Seignior. In 1835, while that same Bashaw was besieged in this city by the partisans of his nephew, I'Mohammed, an Ottoman vizier was once more dispatched from Constantinople, with instructions to put under arrest the leaders of both factions, send them to Constantinople, and take in hand the administration of the regency in behalf of the Sultan. The scheme succeeded most easily, and though the whole population was in arms, having just fought for three long years, these for Ali Bashaw and those for the pretender, I'Mohammed, there was not one single shot fired against the new ruler sent from across the seas to dispossess a family that had reigned over the country for nearly two centuries; for all admitted that there could be contention between the respective followers of the two would-be lieutenants of the Sultan, but implicit submission was due to the will of the master himself.

4. In the month of December, 1832, when Mohammed Ali Pasha, Vice-King of Egypt, received the first news of the splendid victory obtained by his son, Ibrahim Pasha, who had just routed and destroyed, at Konia, the Ottoman army commanded by Seraskier Reschid Pasha, the exulting old man declared to the French agent, who was urging him to come to terms of peace with his sovereign, that he would not be satisfied with the cession of the four pashaliks of Syria and the district of Adana, but would like besides to be put, in his relations with the Porte, on the same footing as the Algerine Deys of old, which could not mean, of course, absolute independence.

5. Speaking of those Algerine princes, when the French took possession of their capital, in the month of July, 1830, Sultan Mahmoud sent over his kapoudan, Pasha Tahis, to Hussein Pasha, the reigning Dey, to urge him to make amends to France; but the French, bent on conquering the regency, did not allow the Ottoman dignitary to land at Algiers. Subsequently Reschid Bey Effendi was sent as ambassador to Paris to protest, in the name of the Ottoman sovereign, against the conquest of Algiers.

6. In 1836 the French government, fearing lest the purpose of a naval expedition just from Constantinople might be to bring to the Bey of Tunis the Sultan's firman of investiture for the Beylik of Constantine, of which they meditated to take possession, dispatched a squadron commanded by Rear-Admiral Hagon to watch the movements of the kapoudan, and prevent him from communicating with Tunis. The same maneuver was repeated on both sides in the month of July, 1837, and this time Rear-Admirals Gallois and Calande, commanders of the French squadrons, went to cast anchor under the very guns of La Goulette, (a fort commanding the entrance to the port of Tunis,) to make assurance doubly sure that the Ottoman fleet could have no communication with the Bey, a conclusive proof that the French acknowledged the right of the Sultan to give Constantine to whom he pleased.

7. During the Crimean war, while the English and French were pelt-ing the Osmanli Sultan *à quis mieux mieux*, the latter thought the opportunity too good to be lost to assert his right of suzerainty over Tunis, and in consequence he declared that he would require from the Bey of that Regency, as from a dutiful vassal, an army of 10,000 men. In vain did the ministers of the allied powers remonstrate with him that the time was very inopportune to agitate that question of suzerainty over a distant African country, when his very empire was at stake. The Grand Seignior, not unlike a woman who, while she is sinking in a deep river, would rely on her husband to save her, and have on her part no other anxiety but to rescue her trinkets, would give no heed to the

wise and earnest advices of the friendly governments. The utmost the latter could obtain from him was to reduce the number of the Tunisian soldiers required by him from 10,000 to 2,000. Those 2,000 men had accordingly to be contributed by the Bey of Tunis. They never went farther than Constantinople, where they were garrisoned during the whole war, doing police duty, for neither Lord Raglan nor Marshal Canrobert would have tolerated in their camps the presence of those improvised troopers. But the mere fact that they were sent by the unwilling Bey proved that Tunis was yet, as Algiers was in former times, and as Tripoli in all times has been, one of the Sultan's possessions.

8. I might lengthen this dispatch much beyond reasonable bounds were I to give all the proofs I have gathered that the regencies were under the suzerainty of the Constantinople sovereign. I will produce one more fact only. In the treaty of 1740, between France and the Porte, I find (article 11) very bitter complaints against the Algerines. By that article the French are authorized to refuse them admittance to their ports; orders were given the Algerines to set at liberty all the French slaves they had in their power, and the treaty promised that, should those orders be not obeyed, the Ottoman Majesty would dismiss from office the Beg-ler-bey ruling in Algiers—a promise the Sultan could not have made had not the Dey been one of the functionaries of his government. I must here make the remark that the title of Beg-ler-bey corresponds to that of a second-class pasha.

Such are, among many others, a few proofs that for the last two centuries the Barbaresque regencies belonged to the Ottoman Padishahs, and that in 1835 Sultan Mahmoud could not conquer Tripoli for the simple reason that it was already his own, had never rebelled against him, and no foreign nation ever disputed his title of sovereignty—quite the reverse. There was, I repeat, no conquest made here in 1835; simply the suzerain, being unsatisfied with his lieutenant ruling in Tripoli in his behalf, sent over another one from Constantinople, had the former one arrested, and introduced considerable changes in the home government of the Regency.

But it may seem strange, and quite against the rules, that the Sultan's lieutenants, governing the regencies in his behalf, could enter into treaties with other governments, and have wars with foreign nations, without necessarily involving the other empire over which that Sultan reigned in their wars. To that I will answer, that there are many such cases in past and present history. For instance, Charles V, Emperor of Germany and King of Spain; Augustus, Elector of Saxony and King of Poland; James I, King of Scotland and of England; William III, Stadholder of the Netherlands and King of Great Britain; George I, King of Hanover and of Great Britain; the Hapsburgs of the last century, Kings of Hungary and Bohemia and Emperors of Germany; the actual King of the Netherlands, Grand-Duke of Luxembourg, the King of Prussia in 1848, at the same time suzerain of the Swiss canton of Neuchâtel—all those sovereigns could, through their lieutenants, have sustained a war in one of their possessions without necessarily involving the other country over which they reigned in that war.

That such was the fact in regard to Tripoli, I will shortly prove in the most conclusive manner by what took place in this city seventeen years after the alleged conquest of Tripoli. But supposing the political relations between the regencies and the Emperor of Constantinople were on a footing irregular and quite anomalous, we have to deal with facts and not with theories. History, and in particular Ottoman history, even at this present time, teems with anomalies of the kind, and it is

not the duty of a diplomatist to attempt to reconcile stubborn facts with his notions of political architecture.

The best proof of that, as far as the regencies are concerned—such was the view taken by foreign powers and Turkey itself—we find in the fact that the moment the Vizier, sent in 1835 from Constantinople, assumed the ruling authority in Tripoli in the name of his master, he was recognized as such by the representatives of all foreign powers; while three years before, when Youssouf Pasha abdicated the Crown in favor of his son Ali, those same gentlemen declined to call on the new ruler, giving as a reason that they wanted to receive instructions from their governments ere they would pay Ali Bashaw a visit, which might be considered as an acknowledgment of his right to rule over the country.

On the other hand, neither in 1835 nor since have the Osmanli Viziers ever given foreign powers any official notice in regard to their alleged conquest of Tripoli, as they should not have failed to do if they had conquered that country, with which so many nations had entered into treaties.

It was from the first understood on all sides that the Ottoman Sultan had a perfect right to change at his will the home administration of the Regency, but could not at his pleasure modify the political relations established, with his knowledge and tacit consent, by virtue of treaties between foreign powers and the lieutenants he had appointed to rule over that Regency.

II. But I pass to the hypothesis that the Ottoman sovereign really effected a conquest in 1835 when he took possession of Tripoli; now comes another theory: I pretend that that sovereign would not for all that have a right to ignore the treaties between this country and other nations.

The political status of Mahommedan governments in all the countries bordering on the Mediterranean Sea is very different from that of Christian states, at least as far as regards the former's diplomatic relations with civilized nations. While the latter constitute one family, a *concert*, as the French have it, governed by certain laws and enjoying certain privileges, the Moslems who took possession of the fairest provinces of the Roman empire were not till quite lately admitted into that family; they were considered as without the pale of the European concert, as though they were yet in a state of war with Christian nations. For that reason they never made treaties with the latter, but capitulations and armistices.

"There have commonly been," said Vattel, "instead of peace, armistices only, of long years, between Christians and Turks; sometimes on account of a wrong spirit of religion; some other times, because neither the former nor the latter would recognize each other reciprocally, as the legitimate masters of their respective possessions." (*Droit des gens*, Livre iii, ch. xvi, § 236.)

I would respectfully refer the Department on the same subject to Marten's *précis du droit des gens moderne de l'Europe*, tome ii, § 293; Klüber's, ditto, § 277, 278; Wheaton's *Elements of International Right*, tome ii, § 19.

"Of course," continues Vattel, "the belligerents are allowed to go and come, the ones to and from the places of the others, during the armistice, the more so if the latter is to last a considerable time, just as the same is allowed in time of peace, for hostilities are suspended." (Livre iii, ch. xvi, § 257.)

The political relations between Christians and Mohammedans were precisely of that nature. The followers of Christ and the Sons of Islam

were reciprocally considered as at all times at war, the ones with the others, and their time of practical peace was only a truce of long duration. It matters but little in this respect, when we apply that principle to Tripoli, whether the Bashaws of that Regency, who made with Christians those armistices mistakingly named treaties, were independent or lieutenants only of the Sultan, for "a general truce cannot be concluded and effected but by the sovereign himself, or by one to whom he has expressly given that power. * * * * * Such an extensive power behooves only the governor or vice-king of a distant country for the states which he governs." (Vattell, livre iii, ch. xvi, § 237.)

By virtue of those armistices Mohammedans were suffered to remain in certain provinces of Europe, Asia, and Northern Africa, but on very stringent conditions. They had, for instance, to recognize to every Frank in those countries the right of extritoriality, though the same right was never granted to any of their respective subjects—their ambassadors only excepted—in Christian states. European consuls have exclusive jurisdiction over their subjects in Moslem possessions; they can import all they want for their own use or their families' without paying duty, and, more than all that, they can take away a number of the subjects of the sovereign near whom they are accredited, from his authority, without his leave, and though those subjects should remain in the country. (Inclosure No. 5.)

All these prerogatives which were not reciprocated in favor of Moslems in Christian countries were not privileges granted by Mussulman sovereigns, but rights wrenched from the latter, most of the time at the conclusion of a successful war, and which, to a certain extent, gave Franks in the Levant a kind of co-sovereignty over the land. Those Eastern and Barbaresque provinces were, as it were, neutral ground, the battlefield on which both contending populations could live, each in the enjoyment of certain rights, and both parties by virtue of an armistice, and that arrangement took place, as Vattell has it, because neither party would recognize the other as the legitimate master of those countries.

And now, if both Christian and Moslem populations are in these states in the condition of two belligerent armies during an armistice, can it not be said with truth that any revolution or change of generalship which may take place in the one camp does not affect at all the rights secured by the other party by the truce? If, in 1733, the young Persian general, Nadiz-Kouli-Beck-Efchar, who was then so gloriously warring against the Ottomans, had succeeded in taking possession of Constantinople, as it was his intention, would the governments of Europe have considered all their capitulations with the Porte as without force from the moment of the conquest, and their rights secured by those capitulations as at an end? Of course not.

But instead of indulging in comparisons and suppositions which may persuade, but will prove nothing, it is better to resort to facts.

1. Here we are, 38 years after the alleged conquest of Tripoli by the Porte, and the treaties made by all Christian powers with that Regency are yet in force.

2. It is generally understood that the capitulations made between the Porte and other governments are to be applied to all the powers of the Ottoman Empire; but so far Tripoli has been excluded from the application of those treaties.

3. We could say the same in regard to the provisions of the protocol relative to the possession of real estate in the empire by foreigners. The latter, when their respective governments have signed the protocol, "in whatever part of the empire they may be, are authorized to submit spontaneously their suits to the parish councils or to the tribunals of

the caazā, without the assistance of their consuls." But, though the British, the French, and other governments have already acceded to that protocol, no Frank in this Regency has yet enjoyed the aforesaid prerogative.

4. If this regency were really after 1835 in the same political condition as Hanover, Algiers, and other conquered countries as regards the treaties made with other nations, how is it that to put an end to those treaties it is necessary to obtain the consent of the Christian parties to them? (See the convention of 1871 between the Porte and Great Britain, and the recent one on the same subject between the Ottoman government and France, Great Britain, and Italy.)

5. In 1852, therefore, 17 years after the alleged conquest of Tripoli, it was the pretension of the French that they could go to war with Tripoli without breaking their peace with the Porte. I refer, as a proof of that important statement, to inclosure No. 6, which is a copy of a letter-circular addressed to his colleagues by the French consul-general here, to convey to them the information that the French squadron was prepared to fire into the Tripolitan vessels, but intended to respect the Ottoman ships in the port, thus making the great distinction between Tripoli and the Porte.

III. I find it not a little significative that the Porte, which, before 1835, was in every treaty mentioning the Regency of Tripoli as one of the Sultan's possessions when no one doubted that fact, should now studiously abstain from alluding to that country as being one of the imperial provinces. See, for instance, the last treaty made by the United States with the Porte. "The present treaty," it is said in Article XX, "shall receive its execution in all and every one of the provinces of the Ottoman Empire; that is to say, in all the possessions of His Imperial Majesty the Sultan situated in Europe or in Asia, in Egypt, and in the other parts of Africa belonging to the Sublime Porte, in Servia, and in the united principalities of Moldavia and Wallachia."

Why, instead of the twelve words which come in that article next after the mention of Egypt, did they not simply insert the two words, Tunisia and Tripolitania? It was because the Ottoman statesmen knew that the American plenipotentiaries would not accept a clause so explicit; but yet the former hoped, by means of an obscure circumlocution of twelve words, to be able to open the door to favorable eventualities; and it was with a real Osmanli cunning that they caused the following article (XXI) to be inserted, intending to use it as a trap. In that article, while the disguise of purpose was all on their side, they succeeded in throwing on the American side a certain amount of suspicion of habitual chicanery by stating that "the Government of the United States of America does not pretend, by any article in the present treaty, to stipulate for more than the *plain and fair* construction of the terms employed."

Such a reserve seems to me as tantamount to a special promise exacted from the United States Government that it would act honestly in the matter. All those American citizens who have at heart the good name of their Government, will, I think, maintain that without incurring the reproach of unfairness the United States can very well, if they please, postpone till the end of the present century, or even to a remoter period, the renunciation to treaties which France, Great Britain, and Italy have renounced to, 38 years only after the alleged conquest of Tripoli, and so long as those treaties are in force we may consistently continue to consider this Regency as being truly under the suzerainty of the Ottoman Emperor, but not belonging to the Sublime Porte.

Please to accept, sir, the assurance of the distinguished consideration with which I am, &c.,

M. VIDAL.

[Inclosure 1.]

"XI. That the subjects of His said Majesty in Tripoli, or its territories, in matter of controversy shall be liable to no other jurisdiction but that of the Dey or Divan, except they happen to be at difference between themselves, in which case they shall be liable to no other determinations but that of the consul only.

"XII. That in case any subject of His Majesty being in any part of the kingdom of Tripoli happen to strike, kill, or wound a Turk or Moor, if he be taken he is to be punished in the same manner, and with no greater severity, than a Turk ought to be being guilty of the same offense; but, if he escape, neither the said English consul nor any other of His said Majesty's subjects shall be in any sort questioned or troubled upon that account, and no trial or sentence to be passed without the consul being present." (Treaty of September 19, 1751, between Great Britain and Tripoli.)

[Translation.]

"XIX. Should controversies arise between a Frenchman and a Turk or Moor they could not be judged by the ordinary judges, but by the Pasha's council, Bey, Dey, Divan, and Militia of the said city and kingdom, in the presence of the commissary,* or by the person commanding in the ports where those controversies will arise."

"XXIII. No Frenchman who has struck a Turk or Moor can be punished ere he have sent for the commissary to defend his case, and should that Frenchman escape said commissary cannot be answerable for it."

(Treaty of 1740 between France and the Porte.)

[Inclosure 2.—Translation.]

"XI. Though the corsairs of Algiers be well treated when they visit ports of France where they get powder, lead, sails, and other articles, nevertheless they do not abstain from reducing to slavery the French whom they meet, and plundering the goods of merchants—a thing several times forbidden them, under the reign of our grandfather of glorious memory—and they have not amended their conduct. Far from giving my imperial consent to such acts, we will that, if there be Frenchmen enslaved in that manner, they be set at liberty, and all their goods restituted to them; and if in the future those corsairs should persist in their disobedience, on the information by letter given us by His Majesty, the Begler-bey, who is in office, shall be dismissed, and the Frenchmen shall be indemnified for their losses," &c.

"LXXXI. It being represented that in spite of the assistance often given to Frenchmen, conformably to the strict observation of the articles of preceding capitulations concerning the corsairs of Barbary, the latter, not satisfied with molesting the French vessels which they meet on the seas, insult and vex the consuls and French merchants who are in the ports (*échelles*) where they visit; when, in future, irregular proceedings of that nature happen, the pashas, commanders, and other officers of our empire will protect and defend the consuls and French merchants," &c.

(Treaty of 1740 between France and the Porte.)

[Inclosure 3.]

Ratification by the Dey of Algiers of the grant made by the Porte in favor of the French at the Bastion d'Afrique. (Treaties of 1697 and 1684 between the Dey of Algiers and France.)

(I could not find in this city a copy of those treaties, nor of those between France and Tunis on the same subject; but they could easily be found either in Washington, or from Paris.—M. V.)

* Official name of the French consuls in foreign countries while Napoleon Bonaparte, Cambacérès, and Lebrun were consuls at the head of the French government.

[Inclosure 4.—Translation.]

"I. The capitulations made and consented to between the former Emperors of France and the Grand Seignior, their predecessors, or those which may be henceforth granted by the ambassador of France, sent on purpose to the Porte, will be strictly and sincerely kept and observed without any direct or indirect contravention to them from either part." (Treaty of 1801 between France and Tripoli.)

"I. That the capitulations made and granted between the Emperor of France and the Grand Seignior, or his predecessors, or those which will be agreed upon anew by the ambassador of France near the Porte, for the peace and order of said states, will be strictly kept and observed, without any contravention, direct or indirect from either part." (1743, supplement of the treaty of 1742 between France and Tunis.)

[Inclosure 5.—Translation.]

"XLV. The ambassadors of the very magnificent Emperor of France, as well as his consuls, will employ such dragomen as they please, and such janissaries as they choose, without any one having a right to compel them to employ those whom they should not like."

"XLVI. Of the servants *rayas**, or subjects to my Sublime Porte, who may be in the service of the ambassador in his palace, fifteen only shall be exempt of taxation, and cannot be annoyed on that subject." (Treaty of 1740 between France and the Porte.)

"I. Consuls may employ Ottoman subjects, as privileged protégés, to the following numbers:

"Consuls-general and the consuls of seats of provinces, four dragomen and four *yassakdjis*.

"Consuls under a consul-general, three dragomen and three *yassakdjis*.

"Vice-consuls and consular agents, two dragomen and two *vassakdjis*." (Rules from the Ottoman foreign office concerning the number of Ottoman subjects whom foreign consuls can protect, issued in August, 1863.)

[Inclosure 6.—Translation.]

"Circular.

"CONSULATE-GENERAL OF FRANCE,
"Tripoli, July 28, 1852.

"The consul-general and chargé d'affaires of France has the honor to inform his honorable colleagues that he has just demanded, in behalf of his government, from the Pasha of Tripoli satisfaction in what concerns him for want of which appeal shall be made to force. He warns them, too, that they and their fellow-subjects will find on board the French vessels the refuge and protection which they want.

"He requests them to take measures in order that the vessels of their nations, which are in port, may go to a place of safety, that is to say, quite without the lines of defense of the town and its surroundings, and that they fail not to hoist their national colors. The vessels named here the Eastern, (*Levantins*), displaying the Ottoman flag, will be treated as neutral. It shall not be the same with those of Tripoli, which belong personally to the Pasha and his people.

"PÉLISSIR."

(That letter circular was sent to the consuls of Tripoli on the eve of the intended bombardment of Tripoli by a French squadron, on account of two Frenchmen killed by the French consul as French subjects, and by the Pasha as Mussulmans and soldiers in the Ottoman army.)

* *Rayas* are the Christian Ottoman subjects.

No. 488.

Mr. Vidal to Mr. Hunter.

No. 41.]

UNITED STATES CONSULATE,
Tripoli of Barbary, May 27, 1873. (Received July 30.)

SIR: I have the honor to call the attention of the Department to a speech (inclosure No. 1) delivered by Lord Clarence Paget, admiral of the British navy, at the inauguration of the Clarence hydraulic dock of Malta, which took place on the 23d of January last. The Cyrenaica, whose settlement by Maltese emigrants and virtual annexation to the British Empire the noble admiral so boldly advocated in that speech, is that very district of this Regency which I had in view when, in dispatch No. 32, I alluded to the possibility for the United States Government to acquire a naval station in the Mediterranean Sea.

It is close to the western boundary of Egypt, was at all times known for the fertility of its territory, and is inhabited by a very scanty nomadic population, which, far from being as warlike as the Algerines or the Tunisians, is, on the contrary, as mild, submissive, and abject as the fellahs of Egypt.

The principal sea-ports of the Cyrenaica are Bengazi, which competes with Tripoli for the importance of its exports; Derna, which was so easily captured by our General Evans at the head of a handful of adventurers during the war between the United States and this Regency; Bomba, one of the very few sea-ports with deep water to be found on the northern coast of Africa, and Cabrook, which, according to trusty travelers, is a splendid port, the center of a magnificent country, but without trade of any kind, a sort of San Francisco Bay under the rule of Mexicans. This is not the first instance given by the British of their intention to occupy that country as soon as they can do so without having to encounter the opposition of European powers. In 1850, during the administration of Mr. Moore O'Ferral, one of the governors of Malta, that question was mooted in the Maltese Council by Messrs. Michel Angelo Sierri and Rosario Messina, who gave the most tempting description of the Cyrenaica. Subsequently, in 1863, another Maltese, Captain Laferla, applied directly to the British government in regard to the same scheme, but trammelled as that government was in those days by its Eastern policy, it judged that the time was not opportune; and the captain received from the Duke of Newcastle (December 22, 1863) an unfavorable reply. Two years later, another governor of Malta, Sir Henry Storks, caused a committee to be appointed to consider that same question. That committee went seriously into the matter, made inquiries respecting Bengazi and the Cyrenaica, but their work amounted to nothing, the Ottoman government not being yet prepared to part with their possession. In 1870 another Maltese gentleman, Mr. Savarese, petitioned the government for assistance to a scheme for an emigration to Bomba and Tabrook, asking from the Maltese government a subsidy of £10 for each emigrant, and his own appointment as a salaried consul at the settlement. And now, when the plan is well matured and the occasion supposed favorable, we see that question taken up by one of the highest functionaries of the British Empire, and its success alluded to as a thing beyond a doubt.

I had the honor to state in dispatch No. 32 that the British, the French, the Italian, and the Spanish governments have, either in turn, or all at the same time, entertained the idea of possessing themselves of the northern coast of Africa. That they have done so partially only

is owing to the dog-in-the-manger jealousy of them all, which, in the words of Lope de Vega,

“Es del hortelano el perro,
Ni come ni comer deja,
Ni esta fuera, ni esta dentro.”

As late as 1572 Charles IX, King of France, had serious thoughts of annexing the Regency of Algiers to his Crown, as it appears from his instructions to François de Noailles, bishop of Aëgs, his minister at Constantinople, under date of May 11, August 8, 14, 25, and September 4 and 6, 1572. (*E. Charrière: Négociations de la France dans le Levant*, tom. iii, pp. 271, 303.)

But the other European nations would rather pay a humble tribute to petty, barbarous Deys, and see their own coasts plundered, their ships captured, their men enslaved, and their women a prey to the lusts of blackamoors, than the power of another Christian people extended in these seas. When, two hundred and fifty-eight years later, the French succeeded at last in conquering Algiers, the British government, lest that conquest might by degrees extend as far as Egypt, which, for the last hundred years, has been the main objective point of the annexing policy of the great European nations, strongly urged the Porte to centralize at Constantinople the local governments of the regencies, so that the latter would be out of the reach of French ambition.

I have shown, in dispatch No. 35, how England has succeeded, as far as Tripoli is concerned, not only in converting this Regency into a mere Ottoman Vilayet, but in bringing France and Italy themselves, by holding before their eyes the fear of Russia, to the adoption of a similar policy; and I have promised to allude in a subsequent dispatch to the Tunisian Regency.

But what she can no longer accomplish by open conquest, England, forever active and on the alert, will attempt by a peaceful settlement and voluntary grants from the Porte; and the day is not distant when Cyrenaica will be marked on the maps of Africa with that red color with which map-makers are used to distinguish the possessions of Great Britain from all the other countries in the world.

I have, &c.,

M. VIDAL.

Speech delivered by Admiral Lord Clarence Paget at the inauguration of the Malta Clarence hydraulic dock, on the 23d of January, 1873.

Lord Clarence replied as follows:

YOUR EXCELLENCY, LADIES, AND GENTLEMEN: Permit me to thank Admiral Inglefield for the kind terms in which he has proposed my health, and to your excellency and the ladies and gentlemen present, among whom I recognize many old Maltese friends, I beg to express my gratitude for their cordial reception of the toast. It is true, as Mr. Reed has observed, that I have come a long way to preside on this interesting occasion, but in truth it has been a labor of love; for, having passed many years of my life among the Maltese, I know the value of this great gem of the British Crown and the virtues of its inhabitants, and am glad of the opportunity of visiting them. Nothing has been more remarkable to me than the contrast which these islands afford as compared with the fair land of Italy, through which I have lately passed on my journey hitherward. Nature has been equally bountiful to both, but while here happily there are signs of a contented and thriving population, there, alas! the people are overburdened with taxes, and have the misfortune of a depreciated paper currency; nevertheless, I am bound to admit that, unless Malta bestirs herself, she will lag behind in the race of progress and damage the brilliant position she occupies as the half-way house to our Indian possessions. The first requisites, in order to attract commerce and visitors, are a regular and rapid communication with the Continent, and ample accommodation in the way of hotels; in these she is lamentably deficient; but

these, though matters of immediate importance, appear secondary to the absorbing question as to the disposal of the teeming population of these islands. I find, on consulting the last census, that it amounts to nearly 124,000 inhabitants, in a proportion of 1,200 to the square mile, being denser than that, as far as I am aware, of any country on the globe; but what is still more striking and appalling is its rapid increase, something like 1,000 in every year.

I hear of proposals of emigration to India and the West Indies, which, for the inhabitants of Malta, are distant countries, while the advantages are uncertain.

Those who know the Maltese are well aware that, while healthy, vigorous, and marvelously industrious here, once outside of Gibraltar, they pine to return to the neighborhood of their island. Would it not, therefore, be far more expedient to induce them to colonize the shores of the Mediterranean? There is a magnificent district at their very doors which, having visited, I can say from experience is admirably adapted to this people, and in fact was in all probability their original home. I speak of that which is known as the "Cyrenaica," and with whose interesting history you are probably acquainted. Suffice it to say that it was one of the principal granaries of ancient Rome, and from its great fertility was designated in mythological language as the "Garden of the Hesperides."

It is now desolate and uninhabited, save by occasional wandering tribes of Arabs, with whom there would be little difficulty and small expense in coming to amicable terms for the grant of land to Maltese settlers.

The time was when such an idea as I venture to broach would have been considered by European nations as one of conquest and thirst for political aggrandizement, but I, for one, believe those days are passed. The world knows that England loves not conquest, and it is but the other day that we were blamed throughout Europe for not retaining our hold of Abyssinia and bringing it into civilization.

It needs but the consent of the Sultan, who is under so many obligations and is so friendly to England, to permit the settlement of the superabundant population of these islands, *under their own flag, and as free owners of the land, on fair and equitable terms*, to revive by their extraordinary industry the fertility of that beautiful region; and I verily believe that time is come when such a proceeding would be viewed with equanimity if not approbation by Christian nations.

I would venture to ask the government of England to consider this serious fact, that by the last census there is now a population of 32,000 in these islands which is returned as having no occupation whatever, and is therefore a burden, producing pauperism, disease, and other concomitant misfortunes; in other words, every fifth individual one meets here is useless in his generation; but by removal to another sphere his talents and energy would contribute to the general welfare of mankind.

I am bold in advocating these views, but they were impressed on my mind by a man greatly beloved and long resident in Malta, the late Right Honorable John Hookham Frere, and they are shared in by many enlightened inhabitants of these islands. I trust, therefore, that I shall be pardoned for introducing them on this occasion, for I assure you, sir, that they come from the honest convictions I have imbibed during a long acquaintance with this remarkable people.

XXXIII.—VENEZUELA.

No. 489.

Mr. Pile to Mr. Fish.

No. 60.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, September 9, 1872. (Rec'd Oct. 22.)

SIR: Since my No. 50, referring to the steamer *Virginus*, that vessel has remained at Puerto Cabello. The parties owing the bottomry bond for \$13,000 instituted legal proceedings to collect the money before the courts at Puerto Cabello.

In pursuance of these proceedings, and without any apparent opposition on the part of those who profess to represent the owners, the steamer was sold August 10, at public sale, to one Mr. Bailey for \$18,000.

Suddenly the representatives of Patterson & Co. professed to have received instructions not to allow the vessel to go to sale. Mr. Bailey

was induced not to pay the purchase-money, or at least he did not pay it; and the captain of the vessel claimed the right to retain the American flag and character of the vessel.

In this complicated state of things, the United States consul at Puerto Cabello applied to me for advice and instruction.

I advised him that we could not interfere in any way with the legal proceedings in the Venezuelan courts, except to protest in case of "notorious" or "manifest" injustice to American interest; that we must be governed by the decision of the local authorities as to the sale. If they formally and officially declared the sale void, that would leave the vessel precisely as it was before the proceedings were consummated by sale, viz: an American vessel under "bottomry bond," with proceedings against her to collect amount of said bond. August 19, the court of first instance at Puerto Cabello formally declared the sale null and void, sending copy of decree so declaring to the consul. Since then a compromise has been made with holders of this "bottomry bond," and an extension of six months' time secured. The costs have been paid, all proceedings against the vessel dismissed, and the holders of the bond have filed with the consul their written consent for the departure of the vessel from that port.

There has been an air of mystery and indications of "tinkering" about all these proceedings, and, in fact, about all the doings of the *Virginus* and her people, that is very unpleasant, not to say suspicious; but as I can learn nothing certainly establishing fraud or bad faith, I see no alternative but to recognize the apparent facts, and treat the vessel as any other American vessel, except in the matter of exercising more than ordinary care in dispatching her. I have so advised the United States consul at that port.

I am to-day informed that the *Virginus* has received coal from Curaçoa and will sail in two or three days.

A Spanish man-of-war is watching the vessel, and may capture or sink her. If so, the facts will be promptly reported to the Department.

I am, &c.,

WM. A. PILE.

No. 490.

Mr. Pile to Mr. Fish.

No. 64.]

LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, September 23, 1872. (Rec'd Oct. 21.)

Sir: The steamer *Virginus* left Puerto Cabello on the evening of September 7, dispatched in the usual manner by the United States consul and local authorities of that place. She passed out very near the Spanish man-of-war *Basco Nuñez de Balboa*, and went to sea without a shot being fired at her.

Thus has ended the "bluster and noise" that has been kept up for four months at Puerto Cabello about this vessel.

I am, &c.,

WM. A. PILE.

No. 491.

Mr. Pile to Mr. Fish.

No. 72.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, December 10, 1872. (Rec'd Jan. 3, 1873.)

SIR: A fleet of five German war-steamers, with an aggregate of two thousand men and officers, anchored in the port of La Guayra yesterday. The object of their visit has not transpired at this writing, but it is supposed to be a friendly call. The German minister resident states that he had no notice nor information of their coming, and does not know its object, but supposes the fleet is on a cruise and have incidentally called at La Guayra.

I am, &c.,

WM. A. PILE.

No. 492.

Mr. Pile to Mr. Fish.

No. 80.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, May 7, 1873. (Received May 21.)

SIR: I transmit to the Department, by this mail, the printed book containing the report made by President Guzman Blanco to the Congress of Venezuela, of his acts and proceedings during the time that he exercised the dictatorship conferred upon him by the representatives of the States that met in Valencia in June, 1870. Everything done by him, including decrees issued, laws announced, &c., was approved by the Congress.

The attention of the Department is respectfully invited to two laws decreed by President Blanco in reference to foreigners, numbered 548 and 549, and found on pages 862 and 863 of the book referred to.

Article 5 of the first of these laws reads: "Neither domiciled nor transient foreigners have the right to diplomatic recourse (*ocurrir á la via diplomática*) except, after having exhausted the legal resource before the competent authorities, it shall clearly appear that there has been a denial of justice or notorious injustice."

Articles 8 and 9 of the second law reads as follows:

"Article 8. He that shall appear in a manifest manner to have exaggerated the amount of damages that he claims to have suffered will lose whatever right he may have, and will incur a fine of from five hundred to three thousand dollars, or an imprisonment of from three to twelve months. If it should result that the claim is totally false, the guilty party will incur a fine of from one to five thousand dollars, or imprisonment for from six to twenty-four months."

"Article 9. In no case can it be claimed (*podrá pretenderse*) that the nation or the States should indemnify damages, injuries, or spoliations that have not been made or executed by the legitimate authorities acting in their official character."

The first of the above translated articles formally enacts the doctrine so often claimed by Venezuela, and as often denied by other nations, that foreign residents in Venezuela shall not claim the intervention of their governments in case of losses by violence until they have resorted to

the courts of this country for a remedy. The second may be the occasion of many wrongs and oppressions upon foreigners, and the third is intended to relieve the government of Venezuela from all responsibility for injury to the persons or property of foreigners by revolutionary parties.

I am informed that these laws have caused grave apprehensions on the part of many foreign residents of this country, and that the representatives of the European nations accredited to Venezuela have made them the subject of communications to their respective governments.

I am, &c.,

WM. A. PILE.

No. 493.

Mr. Pile to Mr. Fish.

No. 81.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, May 26, 1873. (Received June 18.)

SIR: This country continues in apparent peace, but I perceive a marked decrease in public confidence since my return to Caracas, notwithstanding the much talked of termination of the "*dictadura*" and the inauguration of a constitutional government.

I have repeatedly stated in previous dispatches to the Department that in the establishment of a regular and stable government the two formidable obstacles that President Guzman Blanco would encounter would be the adjustment of the relations between the States and the general government and the reorganization of the financial administration of the country.

In reference to the first matter there have occurred bitter and heated discussions in the Congress, and there is much dissatisfaction among the representatives of the interior States.

Pulgar, at Maracaibo, in the State of Zulia, continues to be insolent and insubordinate. Altogether the outlook from this stand-point is not very satisfactory.

In reference to the finances the condition of affairs is in some regards much improved. Vigorous measures have been taken to prevent the wholesale smuggling that has hitherto been carried on from the islands of Trinidad and Curaçoa.

Some fifty or sixty small vessels have been seized and proceedings instituted against them. At the present rate of receipts at the custom-house (*aduanas*) the public rent will amount to five million pesos the present year.

The vigilance and supervision of the government over the administration at the various ports is much more rigid and exacting than previously, with a proportionate decrease in irregularities.

The "*ley de Arancel*" has been revised and modified, but in this instance there has been no improvement. If possible the present law is more contradictory, absurd, and impracticable than the former one, copy of which was sent to the Department.

In accordance with instructions given me in your dispatch No. 59, I have transmitted to the government here a copy of the law passed by the late United States Congress declaring the awards of the mixed commission final and valid, and have informed it that no further discussion of the proceedings of that commission can be entered into on our part.

Copies of my dispatch to this government and other correspondence will be transmitted to the Department by the regular mail via St. Thomas. I send this via Aspinwall by an English steamer, expecting that it will reach the United States some days earlier than by the regular mail via St. Thomas. The regular session of the Congress of Venezuela will terminate to-morrow, and I am informed that an extraordinary session will at once be convened by the President, and that he will by special message submit and ask some action by Congress upon the following matters, viz :

1. The mixed commission with the United States and the action of our Congress in reference thereto.

2. The approval of the proceedings of the commission between Great Britain and Venezuela.

3. The pending question of boundaries between Venezuela and New Granada.

With respect to the action of the United States Congress in the matter of the mixed commission the government here has been very reticent since my return.

It is reported to me by some persons usually well informed that President Blanco will, in a courteous message, say to Congress that he has earnestly endeavored to secure a revision of the work of the commission, but has failed, and ask for such action in reference to the matter as Congress may deem proper. This with a view of securing the passage of a resolution instructing him to accept the result and by negotiation secure the best terms possible as to payment. From other sources equally creditable I am informed that he will declare his determination not to pay the amount awarded by the commission, and to resist payment at the risk of having the coast blockaded and the ports bombarded.

I am quietly awaiting the announcement of his policy. If he adopts the course first indicated, I have some confidence that an acceptable convention can be concluded having "in view the remarks" in your dispatch numbered 59 ; but if he adopts the second, of course all negotiations are at an end. In that case I shall discontinue all correspondence on the subject with this government, report the facts to the Department, and await further instructions. A convention was concluded between Great Britain and Venezuela in 1868 providing for a mixed commission to examine and decide upon claims of British subjects for torts committed upon them by the authorities of Venezuela. The commission concluded their work in 1869, making awards to the amount of \$312,587, (*pesos sencillos*.) It is provided in the convention that these awards should be submitted to the approval of the Venezuelan Congress. They are to be now submitted for that purpose.

The question of boundaries between Venezuela and Colombia has recently excited much attention in both countries, and has produced some ill-feeling. Mr. Galindo, Colombian minister, came here one year ago with full powers to make a final settlement. He and the commissioner on the part of Venezuela have failed to agree. It has now been arranged that the President of the United States of Colombia and President Guzman Blanco shall have an interview at Baranquilla in July, for the purpose of attempting a final settlement of this question. The latter, it is expected, will leave Caracas about June 25 for Baranquilla.

The decree convoking the extra session may be published in the morning before the steamer leaves for Aspinwall. If so, I will inclose copy, but will not be able to translate it, nor will I be able to send with this a copy of the message to the Congress at the opening of the special session. In view of the possibility of detention of dispatches via St.

Thomas by the mail of the 8th proximo, I send the facts transpired up to date via Aspinwall, in order that they may reach the Department as soon as possible.

I am, &c.,

WM. A. PILE.

P. S.—May 27th.—The decree convoking the extra session was transmitted to Congress at a late hour yesterday, but it has not been printed yet.

No. 494.

Mr. Pile to Mr. Fish.

No. 88.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, June 27, 1873. (Received July 21.)

SIR: The steamer Ariel, that left New York the 5th instant, arrived at La Guayra yesterday, and her mail was received here at a late hour last night. The Ariel leaves again for the United States this afternoon, so that correspondence for that vessel must leave this city by this morning's mail.

I hurriedly inform the Department that since my dispatches Nos. 81 and 85 were written, the Congress of Colombia has denied President Murillo permission to hold the proposed interview with President Guzman Blanco at Baranquillo. As soon as the Venezuela government was informed of this, the Colombian minister was informed that diplomatic relations between the two governments were suspended. Mr. Galindo accordingly left here Monday, the 23d instant. These facts are quite important, and would render certain measures for the collection of claims against this government, of which mention was made in personal conference when I was in Washington, much more effective and less difficult of execution than was then thought.

The extra session of Congress has adjourned. Their final action has not been communicated to me, and my information as to the exact nature of that action is not definite and positive; but as near as I can learn the committee of which I spoke in dispatch No. 85 made an elaborate report in reference to the proceedings and findings of the mixed commission, abounding in the usual charges and Spanish rhetoric, and recommended the passage of a resolution authorizing the President to propose to the United States to submit the question as to whether there should be a revision or not to the friendly decision of either England, France, or Russia. This resolution passed.

I will be able to give the Department full information by the mail via St. Thomas, due at New York July 20.

I am, &c.,

WM. A. PILE.

No. 495.

Mr. Pile to Mr. Fish.

No. 90.] LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, July 1, 1873. (Received July 22.)

SIR: As soon as the message of the President of Venezuela to the extra session of Congress was published in the *Opinion Nacional*, I ad-

dressed a note to the minister of foreign relations courteously asking if the publication was a correct copy of the message. (See inclosure A.) To this the minister replied promptly, (inclosure B.) Some days afterward I received the rather curious note, inclosure C.

The character of my reply will be seen in inclosure D.

It is one of the mental vices of this people that they either cannot or will not perceive the limitations and modifications that necessarily exist with respect to almost all general rules.

The *Opinion Nacional*, nominally free and independent, nevertheless is completely subject to the dictamen of the President, and echoes his opinion and wishes upon all political subjects.

I am, &c.,

WM. A. PILE.

[Inclosure A.]

Mr. Pile to Mr. Blanco.

No. 62.]

LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, June 4, 1873.

SIR: The *Opinion Nacional* of Saturday, the 31st ultimo, No. 1262, contains what purports to be the message of His Excellency President Guzman Blanco to the Congress of the United States of Venezuela in extraordinary session.

It is my duty as minister resident of the United States of America to translate and transmit this important document to my Government, and as it is possible that the message, and correlative events may gravely affect the relations between the two countries, I am most anxious that there shall be no more error in the copy transmitted. I have the honor, therefore, to ask your excellency if the copy herewith transmitted is correct, and if it should not be, will your excellency do me the favor to make the necessary corrections on the margin?

I have the pleasure to offer to your excellency the assurances of my very distinguished consideration.

WILLIAM A. PILE.

[Inclosure B.—Translation.]

Mr. Blanco to Mr. Pile.

CARACAS, June 6, 1873.

In answer to the note of your excellency, the 4th ultimo, No. 62, I have the honor to inform you that the publication in the *Opinion Nacional*, No. 1262, to which you refer, is a faithful copy of the message of His Excellency the President of the republic to the Congress of the nation, dated 28th of last month. I therefore return to your excellency the printed slips that accompanied your note.

I reiterate to your excellency the assurances of my very distinguished consideration.

JESUS MA. BLANCO.

[Inclosure C.—Translation.]

Mr. Blanco to Mr. Pile.

CARACAS, June 9, 1873.

Having already complied with a consideration of courtesy, by informing your excellency that the publication in the *Opinion Nacional*, No. 1262, strictly agreed with the message of His Excellency the President of the republic, sent to the Congress of the nation on the 28th of last month, I comply to-day with the duty of informing your excellency, in order to avoid that the two cited notes might serve as a precedent that would authorize in the future an inquiry of the same kind, that the government of

the republic, in accordance with the provisions of public law and international usages, including those of the United States of the North, professes the principle that the messages, reports, memorials, and other documents of exclusive communication between the jurisdictional powers of the republic are of its exclusive competence and in no case will be submitted to foreign inquisition.

For a similar reason I am obliged to inform your excellency that the publications of the free press of the country neither can be the cause of diplomatic inquiry or reclamation, as they are neither of an official nor private nature.

I hope that your excellency will see in these declarations a new proof of the desire to avoid all misunderstanding (*dualidad de intelegencia*) that might in the future unfavorably affect the reciprocal friendship of the two governments.

I reiterate to your excellency the assurances of my very distinguished consideration.
JESUS MA. BLANCO.

[Inclosure D.]

Mr. Pile to Mr. Blanco.

No. 66.]

LEGATION OF THE UNITED STATES OF AMERICA,
Caracas, June 11, 1873.

SIR: The note of your excellency, dated the 9th instant, has been received and considered with careful and respectful attention. The correctness of the doctrine announced therein, "that the messages, reports, and memorials, and other documents of exclusive communication between the jurisdictional powers of a nation, are of its exclusive *competencia*, is not denied, but I am unable to perceive that there is anything in my note of the 4th instant that in the slightest manner infringes upon this doctrine.

No question was raised, suggested, or entertained as to the character or propriety of the message. That is a matter of the "exclusive competency" of His Excellency the President of the republic.

But, as your excellency doubtless very well understands, where there is subsequent and "correlative" action or "events" affecting the international relations of a government, these *public documents* become a legitimate and important subject of consideration, not for the purpose of *inquisicion estrana*, but as proper sources of information in determining the nature and character of the governmental *action* which they may have produced or influenced.

The correctness of this doctrine is fully recognized in the message to which these notes refer, and it was in this sense alone that I considered it my duty to translate and transmit it to my Government, and this alone was the motive of my respectful request as to the correctness of the copy referred to, so courteously complied with by your excellency in your note dated June 6, and for which my acknowledgments are respectfully made. The representative of a people that publish more than five thousand independent newspapers and magazines need not be informed that such publications are not subject "*á inquisicion ni reclamacion diplomatica*." I have neither made nor thought of making any diplomatic reclamation as to such publications.

In relation to this matter, however, it may be remarked that the practice of transmitting such publications by diplomatic agents to their governments, not as matter of reclamation but as sources of information as to the feelings and convictions of the peoples and nations where they are published, is quite general, and sanctioned by the usages of modern diplomacy.

I hope your excellency will perceive in these declarations an equal desire with that you are pleased to manifest to avoid all causes of misunderstanding or "*dualidad de inteligencia*" in the cultivation of the reciprocal friendship of both countries.

I have the pleasure to offer to your excellency the assurances of my high consideration.

WILLIAM A. PILE.

OPINIONS
OF THE
HEADS OF THE EXECUTIVE DEPARTMENTS,
AND OTHER PAPERS,
RELATING TO
EXPATRIATION, NATURALIZATION,
AND
CHANGE OF ALLEGIANCE.

UNIVERSITY

RECORDS OF THE UNIVERSITY OF CALIFORNIA

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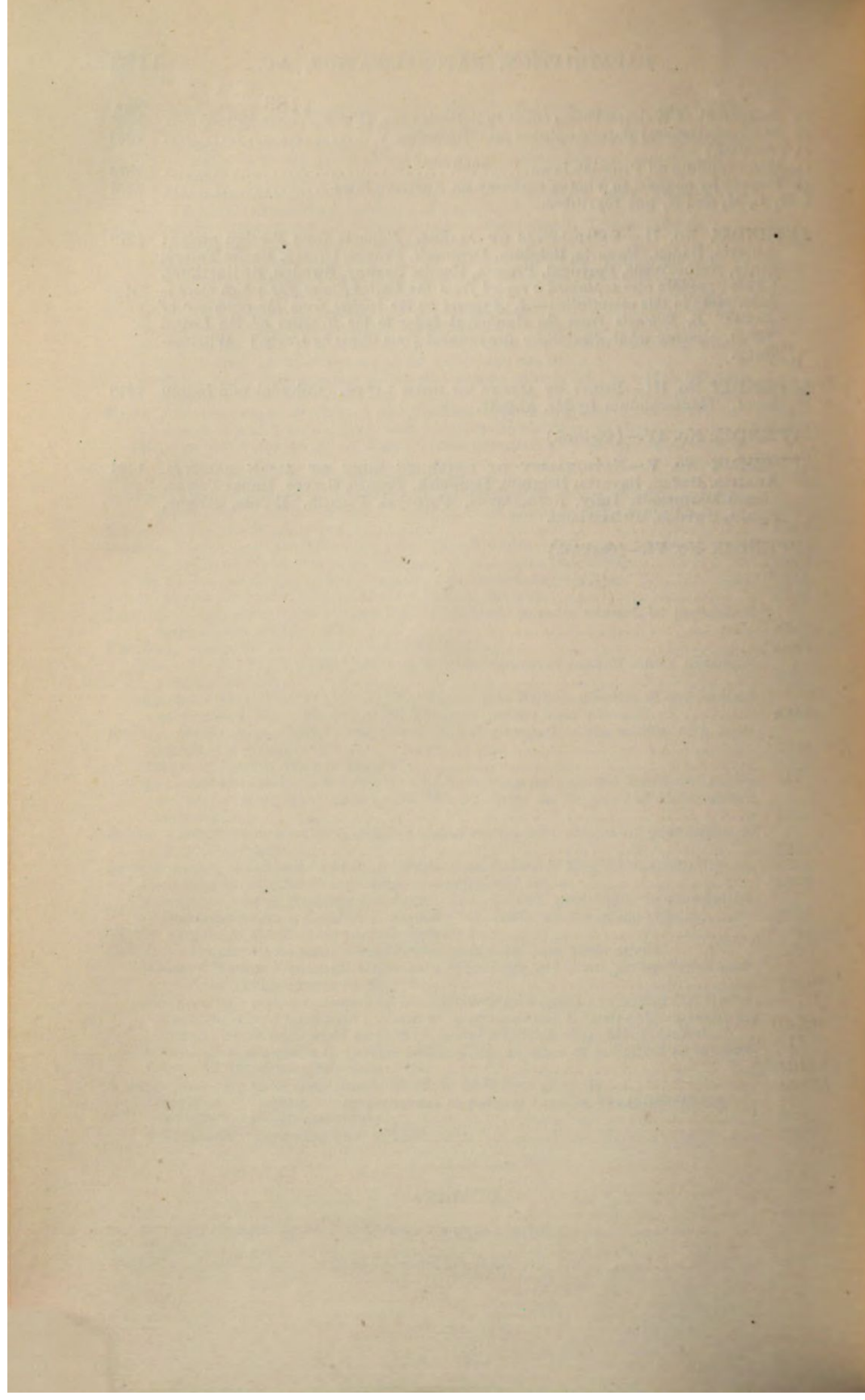
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*[This appendix also contained a report from the United States for which there is
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PAPERS

RELATING TO

EXPATRIATION, NATURALIZATION, AND CHANGE OF ALLEGIANCE.

No. 496.

*The President to the Secretary of State.*¹

EXECUTIVE MANSION,
Washington, D. C., August 6, 1873.

SIR: Circumstances have made it desirable that I should have the opinions of the principal officers in each of the Executive Departments respecting several questions which are stated below.

It is proper to say that these questions concern solely the relations between the Government and persons who may claim its protection as citizens of the United States. They do not extend to an inquiry whether rights of succession or of property may or may not be affected by any of the conditions referred to.

Your opinion on these subjects, in writing, at your early convenience, is desired, with a view to forming a general plan of conduct for the Executive in respect to such questions.

You will inclose your reply, addressed to me, under cover to the Secretary of State, indicating on the envelope that it is in reply to my letter of this date.

I am, sir, your obedient servant,

U. S. GRANT.

Hon. HAMILTON FISH,
Secretary of State.

QUESTIONS.

EXECUTIVE MANSION,
Washington, August 6, 1873.

I. The law-making power having declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?

IV. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside

¹A similar letter was addressed to each head of an Executive Department.

abroad, without an apparent intent to return to them, and who do not contribute to its support?

V. What should constitute evidence of the absence of an intent to return in such cases?

VI. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States entitled to its protection?

VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

U. S. GRANT.

No. 497.

The Secretary of State to the President.

DEPARTMENT OF STATE,
Washington, August 25, 1873.

To the President:

I have had the honor to receive your communication, dated the 6th instant, requiring my opinion as the principal officer of one of the Executive Departments respecting several questions which accompanied your communication.

In obedience to that requirement I respectfully submit my opinion, in answer to the several questions, as follows:

“Question 1. The law-making power having declared that ‘the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,’ (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?”

The act of Congress of 27th July, 1868, (15 Stat. at Large, 223,) disposed of the contradictory opinions and decisions of officers of this Government as to the right of expatriation (so far as it concerns citizens of the United States) by declaring in its preamble that “the right of extradition is a natural and inherent right of all people.”

This is the legislative declaration of the principle on which the naturalization laws of the United States have ever rested; and is the legislative sanction of the doctrine which has, almost without exception, been uniformly held in the diplomatic correspondence, and by the executive and political branch of the Government.

There seems, therefore, to be no difficulty in answering to the first question that the Executive should not refuse to give effect to an act of expatriation of a citizen of the United States.

But the legislative authority which declared it “to be a natural and inherent right of all people,” has failed to define “expatriation,” or to declare how or under what circumstances it may be exercised, what is essential to its full attainment, or what shall be the evidence of its accomplishment.

The absence of authoritative or of legislative definition on these points has given rise to much doubt and correspondence on the part of the Executive Departments of the Government.

Expatriation, I understand to mean, the quitting of one's country with an abandonment of allegiance, and with the view of becoming permanently a resident and citizen of some other country, resulting in the loss of the party's pre-existing character of citizenship. The quitting of the country must be real, that is to say, actual emigration for a lawful purpose, and should be accompanied by some open avowal or other attendant acts showing good faith, and a determination and intention to transfer one's allegiance.

It cannot be exercised by one while residing in the country whose allegiance he desires to renounce, nor during the existence of hostilities; no subject of a belligerent can transfer his allegiance or acquire another citizenship, as the desertion of one's country in time of war is an act of criminality, and to admit the right of expatriation "*flagrante bello*" would be to afford a cover to desertion, and treasonable aid to the public enemy.

It can be exercised only by persons of lawful age, and not by those who leave their country under the charge or conviction of crime, or other disabilities. And the same considerations of public policy which deny the right of any citizen in time of war, would seem to justify its denial to any citizen while in the actual service of his country; and it will be remembered that Congress has asserted its right to denationalize its own citizens, and has defined one mode whereby the right of citizenship shall be forfeited, in the act of March 3, 1865, (13 Stat., p. 490,) which provides that, in addition to the other lawful penalties of desertion from the military or naval service of the United States, all persons who shall desert such service, or who, being enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States with intent to avoid any draft into the military or naval service, duly ordered, shall be deemed to have voluntarily relinquished and forfeited their rights of citizenship, or to become citizens, and shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

"Question 2. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than an act of expatriation?"

This question is understood to presuppose an actual change of residence; inasmuch as no person can make himself subject to another power while domiciled and resident within one to which he owes allegiance.

Chief Justice Marshall (2 Cranch, p. 119) says that when a citizen by his own act has made himself the subject of a foreign power, his situation is completely changed, and that the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance.

This opinion is in conformity with public policy and right, and is sustained by the general authority of the writers on public law.

The fourteenth amendment to the Constitution makes subjection to the jurisdiction of the United States an element of citizenship of the United States.

If, then, to this act of voluntary submission of himself to the sovereignty of another power be added a formal renunciation of American citizenship, I cannot see that it can be regarded otherwise than as an act of expatriation.

Hence, it would seem that the marriage of a female citizen of the United States with a foreigner, subject of a country by whose laws marriage confers citizenship upon the wife of its subject, and her removal to and

residence in the country of her husband's citizenship, would divest her of her native character of an American citizen.

A Frenchman loses his native character by foreign naturalization, or by accepting office under a foreign government without permission of the State, or by so establishing himself abroad as to evidence an intention of never returning to his country.

The Austrian and Prussian emigrant who has obtained permission and quits his country "*sine animo revertendi*," forfeits the privilege of citizenship.

Bavarian citizenship is lost by the acquisition, without the special permission of the King, of "*jura indigenatus*" in another country, by emigration, and by the marriage of a Bavarian woman with a stranger.

Württemberg citizenship is lost by emigration sanctioned by government, or by the acceptance of a public office in another state.

In Spain citizenship is lost by foreign naturalization, or by entering the service of another state without permission of government.

In Portugal, by foreign naturalization; by acceptance, without permission of the King, of a pension and of a decoration from a foreign state, and by judicial banishment.

"Question 3. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?"

Protracted absence from the country of one's allegiance is not of itself evidence of abandonment or of intentional change of allegiance.

But in answering this question with reference to the policy or practice of the United States, regard must be had to the change which late years have brought about with respect to the doctrine of perpetual allegiance, for a long time persistently maintained by Great Britain at least, and with reference to which doctrine many of the opinions and decisions of jurists and of courts have been framed, as also to the facility which the policy of this Government in its naturalization laws has extended to the subjects of other powers to throw off their previous allegiance, and to the earnestness with which the United States, in all branches of its Government, asserts and enforces the right of expatriation and of renunciation of pre-existing citizenship.

The international treaties of naturalization of late years make an entire change of doctrine from that laid down by jurists, and held by courts, before the overthrow and abandonment of the doctrine of perpetual allegiance.

This question, therefore, presents itself for consideration somewhat in the nature of one of first impression, and to be answered with reference to a policy and to principles but recently of general acceptance, rather than to the dogmas of books.

If government assume the duty of protection, the citizen must be ready to support the government with his services, his fortune, and his life even, should the public exigencies be such as to require them.

He may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or a civil domicile there; but if he do so sincerely and *bona fide animo revertendi*, and do nothing inconsistent with his pre-existing allegiance, he will not thereby have taken any step towards self-expatriation.

But if, instead of this, he permanently withdraws himself and his property, and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed

himself in the position where his country has the right to presume that he has made his election of expatriation.

In several of the treaties of naturalization of this with other powers, the residence of a naturalized citizen in the land of his nativity without intent to return to the United States, is declared to work of itself a renunciation of the citizenship acquired by naturalization, and such intent may be held to exist when the residence continues for more than two years.

The fourteenth amendment of the Constitution makes personal subjection to the jurisdiction of the United States an element of citizenship. The avowed, voluntary, permanent withdrawal from such jurisdiction would seem to furnish one of the strongest evidences of the exercise of that right which Congress had declared to be the natural and inherent right of all people.

But in the absence of legislative definition of what constitutes "expatriation," and of the mode whereby it is to be effected, the experience of the Government has made manifest that while expatriation is declared to be a right, which may be converted into a fact, it is, like other facts, to be established in each individual case by evidence peculiar to itself; and each case to be decided upon its own merits.

"Question 4. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?"

It does not necessarily follow that a citizen has lost his right to the protection of his Government because he may have left its territories and resides abroad without apparent intent to return and without contributing to its support.

The intent to return, although not apparent, may be really and *bona-fide* entertained, and it does not necessarily follow that he is avoiding any obligation to his country because he does not contribute to its support. There may be no contributions at the time required of the citizen.

While thus resident or "domiciled" in another country he becomes amenable to its laws; but unless he assume some position or commit some act inconsistent with his pre-existing citizenship he does not forfeit that citizenship, or his right to look to his Government to extend to him all the protection which the nature of any wrong or injustice inflicted upon him by the Government within whose territories he may be domiciled may justify. In connection with this question, and with reference to the exertion of military and naval power for the protection or in favor of citizens of the United States who may be unjustly deprived of their liberty by the authority of foreign governments, it may be remarked that while the act of July 27, 1868, (15 Stat., 223,) declares it to be the duty of the President to demand the reasons of such imprisonment, it prohibits his use of the military or naval power of the Government to obtain his release.

"Question 5. What should constitute evidence of the absence of an intent to return, in such cases?"

By some of the recent naturalization treaties two years' continued residence of a naturalized citizen in the country of his nativity after his naturalization may be regarded as evidence of intent not to return to the United States. The strongest evidence of such intent would be the solemn declaration of intention of remaining abroad.

Naturalization, or taking preliminary steps to become naturalized in a foreign country, voluntary entrance into the civil or military service of

another government, express renunciation, or acts amounting thereto, or indicating a fixed intention of renunciation of pre-existing citizenship, might be regarded as evidence of the absence of intent to return, which might also be otherwise indicated by a variety of facts or of circumstances.

When a person who has attained his majority removes to another country and settles himself there, he is stamped with the national character of his new domicile; and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period; and the presumption of law, with respect to residence in a foreign country, especially if it be protracted, is that the party is there "*animo manendi*," and it lies upon him to explain it.

It is probably not possible to lay down any general rule in answer to this question, and it results that each case must be decided upon its own merits.

"Question 6. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?"

A person of foreign birth once duly naturalized is a citizen, entitled to all the privileges and protection which may be claimed by one born within the territory of the United States. He may, however, divest himself of his acquired citizenship, or may lose his character as such, either in accordance with treaty regulations, or in the same mode by which a native-born citizen becomes expatriated or denationalized.

The act of July 27, 1868, (15 Stat. at Large, p. 223,) enacts that all naturalized citizens of the United States while in foreign states shall be entitled to and shall receive from this Government the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

The question recognizes the fact, already alluded to, that our treaties with some powers make a residence in the country of nativity, without intent to return to the country of adoption, to work a renunciation of the citizenship acquired by naturalization.

By some treaties no fixed period of residence in the country of nativity works of itself a renunciation of the acquired citizenship, while by others the intent not to return may be held to exist when the residence continues more than two years.

By the treaty with Great Britain of 13th May, 1870, the British subject naturalized in the United States after its date who renews his residence within the British Dominion may, on his own application, and on such conditions as the British government may impose, be re-admitted to the character of a British subject. Residence alone, however long continued, without a direct application to be re-admitted to British citizenship, and without the assent thereto of the British government, will not rehabilitate him as a British subject.

The adoption in numerous treaties of this period of two years as that when the intent not to return to the United States may be held to exist on the part of the naturalized citizen who has returned to his native country, indicates that while the principle on which rests the right of protection while in foreign countries of the naturalized is the same with that of the native-born citizen, there is an appreciation of the strong proclivity to resume his original citizenship on the part of him who, having wandered from home, returns to find the attractions of early associations and of family ties enticing him at a period, perhaps, when the restlessness and spirit of adventure of the fresher years of life have

passed, to rest and to end his days amid the scenes of his childhood or youth and among those who claim the strong ties of common blood.

Hence, probably, even when not regulated by treaty, the evidence would be more readily obtained to determine that a naturalized citizen who had returned to the country of his nativity should be deemed to have expatriated himself—or, perhaps it would be more proper to say, to have rehabilitated himself with his original citizenship—than to show that a native-born citizen had expatriated himself by the same period of foreign residence.

It not infrequently happens that naturalization is almost immediately followed by the return of the naturalized person to his native country, and his continued residence there, without having acquired property or established any permanent relations of family or of business in the United States.

Again, cases are of constant occurrence of naturalized persons who have resided for years in the country of nativity, manifesting no purpose of returning to the United States and exhibiting no interest in the Government, but who assert American citizenship only when called upon to discharge some duty in the country of their residence; thus making the claim to American citizenship the pretext for avoiding duties to one country, while absence secures them from duties to the other.

These are among the class of cases where the continued residence in the country of nativity, and the absence of apparent purpose of returning, may be taken at least as *prima facie* evidence of expatriation.

But generally, when not regulated by treaty, the mere absence of apparent purpose of returning to the United States on the part of a naturalized citizen who has returned to his native country and resided there for a series of years, does not of itself constitute evidence of his self-expatriation.

The presumption of law to which reference has already been made, viz, that he is there *animo manendi*, applies, however, to him equally with the native-born citizen, and it rests with him as with the native-born to explain it; and here, again, in the absence of some prescribed rule, the circumstances attending each case must control its decision.

“Question 7. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?”

If born after the father has become the subject or citizen of another power, or after he has in any way expatriated himself, the children born abroad are to all intents and purposes aliens, and not entitled to protection from the United States.

The act of 10th February, 1855, (10 Stat. at Large, 604,) provides that “persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be *at the time of their birth* citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however,* That the right of citizenship shall not descend to persons whose fathers never resided in the United States.”

It will be noticed that the act professes to extend citizenship only to those born abroad whose fathers *at the time of their birth* are citizens.

Every independent state has as one of the incidents of its sovereignty the right of municipal legislation and jurisdiction over all persons within its territory, and may therefore change their nationality by naturalization, and this, without regard to the municipal laws of the country whose subjects are so naturalized, so long as they remain, or

exercise the rights conferred by naturalization, within the territory and jurisdiction of the state which grants it.

It may also endow with the rights and privileges of its citizenship persons residing in other countries, so as to entitle them to all rights of property and of succession within its limits, and also with political privileges and civil rights to be enjoyed or exercised within the territory and jurisdiction of the state thus conferring its citizenship.

But no sovereignty can extend its jurisdiction beyond its own territorial limits so as to relieve those born under and subject to another jurisdiction, from their obligations or duties thereto; nor can the municipal law of one state interfere with the duties or obligations which its citizens incur, while voluntarily resident in such foreign state and without the jurisdiction of their own country.

It is evident from the *proviso* in the act of 10th February, 1855, viz, "that the rights of citizenship shall not descend to persons whose fathers never resided in the United States," that the law-making power not only had in view this limit to the efficiency of its own municipal enactments in foreign jurisdiction, but that it has conferred only a qualified citizenship upon the children of American fathers born without the jurisdiction of the United States, and has denied to them, what pertains to other American citizens, the right of transmitting citizenship to their children, unless they shall have made themselves residents of the United States, or, in the language of the fourteenth amendment of the Constitution, have made themselves "subject to the jurisdiction thereof."

The child born of alien parents in the United States is held to be a citizen thereof and to be subject to duties with regard to this country which do not attach to the father.

The same principle on which such children are held by us to be citizens of the United States, and to be subject to duties to this country, applies to the children of American fathers born without the jurisdiction of the United States, and entitles the country within whose jurisdiction they are born to claim them as citizens and to subject them to duties to it.

Such children are born to a double character: the citizenship of the father is that of the child so far as the laws of the country of which the father is a citizen are concerned and within the jurisdiction of that country; but the child, from the circumstances of his birth, may acquire rights and owes another fealty besides that which attaches to the father.

"Question 8. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

Persons who have formally renounced their allegiance to the United States and have assumed the obligations of citizen or subject of another power—in other words, persons who have denationalized or expatriated themselves—are aliens to the United States, and can become citizens only by virtue of the same laws, and with the same formalities, and by the same process, by which other aliens are enabled to become citizens.

Having replied to the several questions submitted, I may be permitted to express my opinion of the necessity of legislation to define how and by what acts, whether of commission or of omission, or of both, United States citizenship is lost.

It has been shown that in some instances recent treaties provide one test; but even in these cases further legislation is needed to relieve the decision in each case of much embarrassment and of much doubt.

I have the honor to be, sir, with great respect, your obedient servant,
HAMILTON FISH.

No. 498.

The Secretary of the Treasury to the President.

TREASURY DEPARTMENT, October 20, 1873.

To the President:

I have the honor to acknowledge the receipt of your letter of the 6th August, 1873.

In this letter you desire my answer to eight questions, each of which bears in some form upon the question of expatriation.

These questions are as follows:

- "I. The law-making power having declared 'that the right of expatriation is a natural and inherent right of all people, indispensable to the rights of life, liberty, and the pursuit of happiness,' (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?"
- "II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?"
- "III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?"
- "IV. Ought the government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad without an apparent intent to return to them, and who do not contribute to its support?"
- "V. What should constitute evidence of the absence of an intent to return in such cases?"
- "VI. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?"
- "VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?"
- "VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

To reach a satisfactory answer to these questions it becomes necessary to consider with some precision whether a citizen of the United States could, before the passage of the act of July 27, 1868, expatriate himself; and, if so, what steps must be taken by him before he could carry his purpose in this regard into effect.

It is a rule of the common law that a natural-born subject owes an allegiance which is intrinsic and immutable. This allegiance cannot be forfeited, canceled, or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. Thus it is held that the natural-born subject cannot by an act of his own, nor by swearing allegiance to another, put off or discharge his natural allegiance to the country of his birth, for this natural allegiance was intrinsic and primitive and antecedent to the other, and cannot be divested without the concurrent act of the prince to whom it was first due. In McDonald's case, who was tried in 1846 for high treason, it was held that it was not in the power of any subject to shake off his allegiance and transfer it to another, nor could a foreign prince by naturalizing a British subject dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service or refusing to leave that service when commanded to by the King is held to be a misdemeanor, and by a proclamation on the 16th of October, 1807, when the kingdom of Great Britain was menaced, all seamen who were natural-born subjects were, on pain of contempt, ordered to withdraw themselves and return home; and it was further declared that naturalization

did not alter their duty to their lawful sovereign. In later discussions, however, which have taken place between the British and American Governments, the practical application of the doctrine of indefeasible allegiance would seem to be confined to cases of *return* to Great Britain, and not to operate on their assumed obligation to their adopted country. In a note of Lord Palmerston, August 16, 1849, to Mr. Bancroft, minister to London, it is said: "It is well known that by laws of Great Britain no restraint can, except in very special cases, be placed upon the perfect liberty of every British subject to leave the realm when and for whatever period of time he chooses. So long as he remains in the United States, or in any other country, he is amenable to the laws of the country in which he resides." (Lawrence's Wheaton, page 927.)

Publicists assert a doctrine in this respect different from that established by the common law. They hold whenever a person attains his majority he becomes free to change his nationality and abandon his native country, unless there be some positive restraint by law, or unless his country be in distress, or in war, and stands in need of his assistance. Cicero regarded it as one of the firmest foundations of Roman liberty that the Roman citizen had the liberty to stay or abandon his residence at pleasure. "*Haec sunt enim fundamenta firmissima nostræ libertatis, sui quemque juris retinendi et dimittendi esse dominum.*"

"The laws of European countries contemplate and provide for expatriation. Thus the code Napoleon provides 'that the quality of Frenchmen will be lost—first, by naturalization acquired in a foreign country; second, by acceptance without authority of the government of public functions conferred by a foreign government; third, by establishment in a foreign country without purpose of return.'"

Expatriation is also lawful in Spain and the Spanish-American Republics.

"In Prussia the law is similar, and in all the German states emigration is permitted, with the express leave from the government. This permission cannot be granted to males between seventeen and twenty-five years unless they produce a certificate from the commission for recruiting the army testifying that they do not propose to expatriate themselves for the sole purpose of evading their military obligations. (Section 17 of the law of 31st of December, 1842.) This certificate serves also as a guide when it is required to determine if there is reason to grant to minors authority to emigrate with their parents.

"In Austria emigration is not permitted without consent of the proper authorities; but the emigrant who has obtained permission and who quits the empire, *sine animo revertendi*, forfeits the privileges of an Austrian citizen.

"In Bavaria citizenship is lost—first, by the acquisition without the special permission of the King of the *jus indigenatus* in another country; second, by emigration; third, by the marriage of a Bavarian woman with a foreigner.

"In Würtemberg citizenship is lost by emigration authorized by the government, or by the acceptance of a public office in another state." (Phillimore on International Law, loc. cit.)

"In Russia the quality of a subject is lost by a residence abroad; by voluntary expatriation without the intention of return; by disappearance. Every individual subject to the capitation-tax is considered to have disappeared who during ten years has not been heard of in the place of his domicile." (Rev. Etr. et Fr., tom. iii, p. 267).

"In Spain the quality of Spaniard is lost by acquiring naturalization in a foreign country, and by entering into the employment of another government without the consent of the King." (Cos Gayon, Diccionario

de Derecho Administrativo Español, p. 360; *Constitucion de la Monarquia Espanola*, Art. 1, § 4.)

In the United States there were, prior to 1868, no laws which either expressly forbade or expressly authorized the expatriation of citizens of the United States, and it was a question which had commanded the serious consideration of the American Government, whether the English doctrine of perpetual allegiance obtained in its fullest extent in this country.

As far as the opinion of the executive branch of the Government can be ascertained from the discussions which arose, it would seem that the doctrine of perpetual allegiance was not in force in this country.

The views of that branch of the Government, in the year 1793, were thus expressed in a letter from Mr. Jefferson, then Secretary of State, to Mr. Morris: "Our citizens are certainly free to divest themselves of that character by emigrating, and other acts manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do."

Again, in the year 1794, Mr. Randolph, Secretary of State, thus expressed himself relative to the alleged expatriation of one Captain Talbot: "I cannot doubt that Captain Talbot has taken an oath to the French Republic, and at the same time I acknowledge my belief that no law of any of the States prohibits expatriation. But it is obvious that, to prevent frauds, some rules and ceremonies are necessary for its government. It then becomes a question, which is also an affair of the judiciary, whether those rules and ceremonies have been complied with." (Letter to M. Fauchet, October 28, 1797.)

General Cass, while Secretary of State, held that "the moment a foreigner becomes naturalized his allegiance to his native country is severed forever. He experiences a new political birth; a broad and impassable line separates him from his native country."

In a report, presented in December, 1851, by Mr. Webster, Secretary of State, in the case of John L. Thrasher, in obedience to a resolution of the House of Representatives, he says:

"There is no doubt that John L. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the island of Cuba for a considerable number of years, engaged in business transactions, sometimes as a merchant, and sometimes as the conductor of a newspaper press, although the precise period and duration of such residence are not known.

"In a letter from the governor of Cuba to Her Catholic Majesty's minister in the United States, it is stated that he has not only been a resident in Havana for a considerable time, but domiciled there by regular proceeding, and that he has in a solemn form sworn allegiance to the Spanish Crown.

"It appears that soon after the failure and breaking up of the late expedition of Narciso Lopez, in the invasion of Cuba by him and the troops under his command, Mr. Thrasher was arrested and tried for high treason or conspiracy against the Crown of Spain, condemned to eight years' imprisonment to hard labor, and sent to Spain in execution of that sentence.

"The first general question is as to this right of exemption from Spanish law and Spanish authority on the ground of his being a native-born citizen of the United States.

"The general rule of public law is, that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to make that place his permanent resi-

dence, or his residence for an indefinite period, it becomes instantly his place of domicile, and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period.

“The Supreme Court of the United States has decided ‘that a person who removes to a foreign country, settles himself there and engages in trade of the country, furnishes by these acts such evidence of an intention permanently to reside in that country as to stamp him with its national character,’ and this undoubtedly is in full accordance with the sentiments of the most eminent writers as well as those of other high judicial tribunals on the subject. No government has carried this general presumption further than that of the United States, since it is well known that hundreds of thousands of citizens are now living in this country who have not been naturalized according to the provisions of law, nor sworn allegiance to this government, nor been domiciled among us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men actually living among us as inhabitants of the United States to learn that by removing to this country they had not transferred their allegiance from the government of which they were originally subjects to this Government.”

* * * * *

In Martin Koszta's case, a Hungarian by birth, who had on the 31st of July, 1852, made a declaration of his intention to become a citizen of the United States, and who while in Turkey on private business of a temporary character was seized, at the instigation of the consul-general of Austria, and confined in irons on board the Austrian brig-of-war the *Huzar*, and released on the demand of Captain Ingraham, who intimated that he should resort to force if the demand was not complied with by a certain hour, the principles which apply to allegiance and expatriation are there stated by Mr. Secretary Marcy in answer to Mr. Hülseman's demand that the President should surrender Koszta, disavow the acts of the American captain, and give satisfaction for the alleged outrage on Austria.

“There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign. By others it is considered a political connection in the nature of a civil contract, dissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is that the citizen or subject having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the finest prospect of happiness for himself and posterity. When the sovereign power, wheresoever it may be placed, does not answer the ends for which it is bestowed, when it is not extended for the general welfare of the people, or has become oppressive to individuals, this right to withdraw rests on as firm a basis, and is similar in principle, to the right which legitimates resistance to tyranny.”

It is said that the naturalization laws of the United States proceed upon the principle that every individual has a right to change his allegiance, and such has been the language of diplomatic communications, in accordance with the doctrine of publicists, that whenever a child attains his majority according to the law of his domicile or origin, he becomes free to change his nationality. In the instructions from Mr.

Cass to the minister at Berlin, July 8, 1859, it is said "the right of expatriation cannot at this day be doubted or denied in the United States. The idea has been repudiated ever since the origin of our Government, that a man is bound to remain forever in the country of his birth, and that he has no right to exercise his free will, and consult his own happiness by selecting a new home. The most eminent writers on public law recognize the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism which has been gradually disappearing from Christendom during the last century."

The question of expatriation has been frequently discussed by the courts of the United States, and though no judicial determination has, so far as I know, ever been had, I think that a review of these discussions will show what is the opinion of those tribunals.

The question first arose in the case of *Talbot vs. Janson*, decided in August, 1795. Talbot, an American by birth, captured a vessel and cargo belonging to citizens of the United Netherlands, a nation at peace with the United States. Talbot claimed that he had been admitted a citizen of the French republic, had therefrom received a commission as captain, and as such had taken as prize the vessel in question as the property of subjects of the United Netherlands with whom France was at war.

The case came by appeal to the Supreme Court. In deciding it one of the judges (Iredell, J.) said: "The first point to be considered is whether Talbot, at the time of receiving his commission, or at the time of the capture, was a French citizen. This involves the great question as to the right of expatriation, upon which so much has been said in this court. Perhaps it is not necessary it should be explicitly decided on this occasion, but I shall freely express my sentiments on the subject.

"That a man might not be a slave; that he should not be confined against his will to a particular spot because he happens to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidentally attached, when he can better his situation elsewhere, much less when he must starve in one country and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world clearly recognize.

"The only difference of opinion is as to the proper manner of executing this right."

The conclusion of the learned judge is, that the right of expatriation ought not to be restrained, but that it can be permitted only by an act of legislature, which, as the guardian of the public interest, is the only power that can take cognizance of the subject. It is not a natural right. As every man is entitled to claim the rights of society, he is in turn under a solemn obligation to discharge to society all his duties faithfully. If, therefore, he is in the exercise of a public trust, he cannot leave his country until he has fully discharged it. If he owes money he ought not to quit the state and carry his property with him without the consent of his creditors. Though a man may be naturalized abroad, yet, if he has not been discharged from his allegiance at home, it will remain, notwithstanding disagreeable dilemmas may be occasioned by the taking upon himself this double citizenship.

The judgment of the court was that, under the circumstances of the case, Talbot must be considered a citizen of the United States, but they gave no decided opinion upon the question of expatriation. The opinion, however, seems to have been that though the general right

of expatriation existed, it could not be exercised without the sanction of the legislature.

The point arose again in Isaac Williams's case, in the circuit court of the United States, in 1797. Williams was indicted for accepting a commission under the French government, and under the authority thereof committing acts of hostility against Great Britain. His defense was that he had expatriated himself and become a citizen of France. Upon the question of expatriation then raised, Judge Ellsworth is said to have held that the common law of this country remains the same as it was before the Revolution. The question, therefore, was to be settled by the application of two principles. "One is that all the members of a civil community are bound to each other by compact; the other is, *that one of the parties to this compact cannot dissolve it by his own act.*" The compact is that society shall protect its members, who on their part are bound, at all times, to be obedient to it, and faithful to its defense. The necessary result is *that a member cannot dissolve the compact without the consent or default of the community.* The most visionary writers do not contend that a citizen may at any and at all times renounce his own and join a foreign country, and the fact that the government permits the naturalization of foreigners implies no consent on its part "that its own citizens should expatriate themselves."

The question again arose in the Supreme Court of the United States in the case of the *Charming Betsey*, and though the point was earnestly argued the court again avoided expressing an opinion upon it. They say, "Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character *otherwise than in such a manner as may be prescribed by law*, is a question which it is not necessary at present to decide."

This was in 1804. In 1805, Judge Washington, in the case of *United States vs. Gillies*, heard in the circuit court at Philadelphia, said: "I do not mean to moot the question of expatriation founded in the self-will of a citizen. It may suffice for the present to say that *I must be more enlightened on this subject than I have yet been before I can admit that a citizen of the United States can throw off his allegiance and his country without some law authorizing him to do so.*" It is true a man may obtain a foreign domicile which will impress upon him a national character for commercial purposes, and may expose his property found upon the ocean to all the consequences of his new character, in like manner as if he were in fact a subject of the government under which he resides. But he does not on this account lose his original character, or cease to be a subject or citizen of the country where he was born, and to which his perpetual allegiance is due."

The question was again presented to the Supreme Court of the United States in 1822, in the case of the *Santissima Trinidad*; but Judge Story, in delivering the opinion of the court, allows the same uncertainty to remain in respect to the solution of it. "Assuming," he says, "for the purpose of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear that this cannot be done without a bona-fide change of domicile under circumstances of good faith. It can never be asserted as a cover of fraud or as a justification for the commission of crime against the country, or for a violation of its laws when this appears to be the intention of the act. It is unnecessary to go further into the examination of the doctrine. It will be sufficient to ascertain its precise nature and limits when it shall become the leading point of a judgment of the court."

In the case of *Stoughton vs. Taylor*, however, determined in the circuit court of the United States, held at New York about 1828, a more liberal view of the right of expatriation was taken.

In this case it is said, "The general evidence of expatriation is actual emigration, with other concurrent acts, showing a determination and intention to transfer allegiance.

"The evidence in this case is emigration more than twelve years since, swearing allegiance to another government eight years ago, entering into its service and continuing in it uniformly from that time to this. On this evidence I cannot hesitate to say that the defendant has lost his character as a citizen of the United States; he has abandoned his rights as such; he cannot now claim them, and cannot be called upon to perform any of the duties incident to that character. *It may, perhaps, be said that the government to which he has sworn allegiance is not independent, and that the act is therefore inoperative and void. If that were so, yet the fact of emigration and the evidence of the animus manendi, the intention to remain abroad and to abandon his citizenship here, as manifested by his oath of allegiance to another government claiming to be independent, are sufficient to sustain his expatriation. In whatever light the government to which he professes to belong may be viewed by other nations, it is independent in fact, and may forever remain so, although not recognized in form.*"

Finally, in 1830, in the case of *Inglis vs. Trustees of Sailors' Snug Harbor*, the Supreme Court of the United States say: "It cannot, I presume, be denied but that allegiance *may be dissolved by the mutual consent of the Government and its citizens or subjects.* The Government may release the governed from their allegiance. This is ever the British doctrine." And in the case of *Shanks vs. Dupont*, decided in the same court, Judge Story, who delivered the opinion, said: "The general doctrine is *that no persons can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens.*" Judge Thompson, who delivered a dissenting opinion, not, however, upon this point, said: "There is not a writer who treats upon the subject who does not qualify the exercise of the right to emigrate, much more that of putting off or changing an allegiance, with so many exceptions as to time and circumstance as plainly to show that it cannot be considered as an inalienable or even perfect right. A state of war, want of inhabitants, indispensable talents, transfer of knowledge and wealth to a rival, and various other grounds are imagined by writers on public law, upon which nature may lawfully and reasonably limit and restrict the exercise of individual volition in putting off allegiance. All this shows that whenever an individual proposes to remove, a question of right or obligation arises between himself and the community, which must be decided in some mode, *and what other mode is there but a reference to the positive legislation or received principles of the society itself?* It is, therefore, a subject for municipal regulation."

The cases cited comprise all which have arisen in the Supreme or other courts of the United States in which the question of expatriation has been discussed, and it will be seen that they have studiously avoided a decision of it.

The State courts, however, have not been so reticent in expressing an opinion on this question.

As early as 1813 Chief Justice Parsons, in the case of *Anslie vs. Martin*, said: "This claim of the commonwealth to the allegiance of all persons born within its territories may subject some persons who, adhering to their former sovereign and residing within his dominions, are

recognized by him as his subjects, to great inconveniences, especially in time of war, when the opposing sovereigns may claim their allegiance. But the inconvenience cannot alter the law of the land. Their situation is not different in law, whatever may be their equitable claims, from the situation of those citizens of the commonwealth who may be naturalized in the dominion of a foreign prince. *The duties of these persons, arising from their allegiance to the country of their birth, remain unchanged and unimpaired by their foreign naturalization. For by the common law no subject can expatriate himself.*"

As far, therefore, as an opinion has been expressed in Massachusetts, the vigorous doctrine of the common law governs. Foreign naturalization is no evidence of expatriation.

Two years before this suit the contrary opinion was expressed by the supreme court of appeals in Virginia. It was held in that State, in the case of *Murray vs. McCarty*, that nature had given to all men the right of relinquishing at pleasure the society in which birth or accident had thrown them. The court say: "It is believed that this right of emigration or expatriation is one of those *inherent rights* of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity. But although municipal laws cannot take away or destroy this right, they may regulate the manner and prescribe the evidence of its exercise; *and in the absence of the regulations, juris positivi, the right must be exercised according to the principles of general law.*"

A temporary absence, however, will not divest a man of the character of citizen or subject of the State or nation to which he may belong. *There must be a removal, with an intention to lay aside that character, and he must actually join himself to some other community.*

The State of Virginia also, by an act of the legislature, has defined citizenship, and has in terms provided for expatriation.

This act declares that all free white persons, born in that or any other State, all aliens, being free white persons naturalized under the laws of the United States, who become residents, all persons who were citizens under former laws, and all children, wherever born, whose father—or, if he be dead, whose mother—shall be a citizen of the State at the time of the birth, shall be deemed citizens of the State.

And it provides that, whenever a citizen, by deed in writing, proved in court or by open declaration made in court and entered of record, shall declare that he relinquishes the character of a citizen and shall depart out of the State, he shall be considered as having exercised the right of expatriation, and shall thenceforth be deemed no citizen thereof.

The decision in *Murray vs. McCarty* was followed by the court of appeals in Kentucky, in 1839, and the right of expatriation declared in the strongest manner: "Whatever may be the speculative or practical doctrine of the feudal governments or ages, allegiance in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as by the adopted citizen *with the presumed concurrence of the Government without its formal or express sanction.* Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation all recognize it. It has grown with our growth and strengthened with our strength. The political obligations of the citizen and the interests of the republic may forbid a renunciation of allegiance by his mere volition or declaration at any time and under all circumstances; and therefore the Government, for the purpose of preventing absence and securing the public welfare, may regulate the mode of expatriation. *But when it has not prescribed any limitation on the right,*

and the citizen has in good faith abjured his country and become a subject of a foreign nation, he should as to his native Government be considered as denationalized, especially so far as his civil rights may be involved, and at least as far as that Government shall seem to acquiesce in his renunciation of his political rights and obligations."

This certainly is a plain enunciation of the principle. Expatriation is a fundamental right, but circumstances may prevent the exercise of it, and the legislature may therefore regulate it, *but unless they do*, it is to be exercised at the discretion of the citizen.

In the case of *Lynch vs. Clark*, decided in New York, in 1844, the court say, notwithstanding the conclusions of Mr. Chancellor Kent, that the doctrine of expatriation does not stand upon the same foundation as that of allegiance by birth, and does not follow from the adoption of the latter the common-law rule, "the right to expatriate was recognized in Pennsylvania and Virginia while they were colonies. The constitution of Pennsylvania prohibited laws restraining emigration from the State, and Virginia enacted a law as recently as the year 1792 providing for expatriation and prescribing its forms. Kentucky followed Virginia in this as well as in many other questions of national policy. This diversity prevailing in the colonies and States prior to 1784 would afford strength to the argument that in the National Government the common-law rule of perpetual allegiance did not prevail."

As late, however, as 1863, the law upon this question seems to have been in doubt and unsettled in that State. In *Ludlam vs. Ludlam* it is said, "that the right of expatriation on the part of citizens of the United States, without the consent of the Government, has never been recognized by the courts of this country or by any of the writers upon public law." The court, however, do not admit unqualifiedly the statement of Chancellor Kent, that the better opinion would seem to be that a citizen cannot renounce his allegiance, and that the rule of the English common law remains unaltered in this country. They say, "whether this statement of the law is to be considered as in all respects correct, may perhaps admit of doubt, as some courts and statesmen have been disposed to regard the right of expatriation as existing where the government has taken no steps to prohibit or limit it." On the other hand, they do not fully concur in the opinion expressed by the court of appeals of Kentucky, and by Secretary Cass, that a citizen has a right to renounce his allegiance at pleasure. They say that the argument of Mr. Rutherford possesses much force, which is in substance that if an individual was at liberty to leave the State when he pleased, civil society would be nothing but a rope of sand; every member of society would be at liberty either to continue in it and advance its general interests, or leave it in order to advance a separate interest of his own. But the great end of forming civil society is to promote the common good and to guard against a common mischief. Certainly, therefore, the nature of civil society can never allow this liberty to its members, *because it is inconsistent with the end* which civil society proposes to itself; and they add that "without, however, pursuing the subject further, it is sufficient for the present case, that all writers, including those who would give the greatest license to the citizen in the exercise of the power of expatriation, agree that no person casts off his allegiance to his native country before he becomes a citizen or subject of another country."

In *Jackson vs. Burns*, decided in the supreme court of Pennsylvania, Chief Justice Tilghman speaks of a "principle not compatible with the constitution of Pennsylvania or her sister States, that is to say, that no

man can, even for the most pressing reasons, divest himself of the allegiance under which he was born."

In *Beavers vs. Smith*, decided by the supreme court of Alabama, in 1847, it is said that "it would seem to follow, necessarily, from our naturalization laws, that our people can emigrate and transfer their allegiance at their pleasure to a foreign government, as our laws do not require the consent of the former sovereign to the expatriation of a foreigner as a condition of his becoming a citizen of the United States. They hold, however, that a mere removal is not enough, and that the general question is unsettled.

In *Fish vs. Stoughton*, where the defendant, a British subject, became a naturalized citizen, and took the oaths of abjuration and allegiance to the State of New York in 1794, and in 1795 took an oath of allegiance to the King of Spain, and was appointed a consul by the Spanish King, and continued to reside in New York without ever changing his domicile, he was still to be considered an American citizen. Without considering the general right of expatriation, the court were of the opinion that to divest himself of his character of an American citizen he must at least *change his domicile*.

There is this much to be said of the question, in the light of the conflicting opinions declared by the different courts. It is evident that the common law of England, based upon allegiance in the feudal sense, arising out of the doctrine of tenures, is not the law here. The right which that law absolutely denies, viz, the right of expatriation, is conceded in all. The question which remains undecided is whether this right can be exercised without legislative enactment. As a result of the cases cited, it is not, perhaps, unreasonable to hold that when the case is presented to the highest court of judicature it will, inasmuch as it has abandoned the fundamental principle of the common law, refuse to be guided by its strict teachings, and under the influence of more liberal views than feudal ones, hold *that, in the absence of legislation*, a citizen may, with certain necessary limitations, abjure his own and become, in accordance with its laws, a citizen of another country.

"It is the recognized principle of the law of nations that all can change their primitive nationality according to their convenience. This principle, admitted by all the world, and in virtue of which every individual may renounce the nationality which birth combined with parentage gives him, does not release him who avails himself of it of the obligations which he owes to his country. So that the citizen or subject who, without authorization of his government, accepts the nationality of a foreign state, may be called upon for the performance of the personal charges imposed upon him by his primitive country, in the form which the law established. Thus a deserter from the military service, who becomes naturalized in the state to which he flies, though not subject to extradition without special treaty authorizing it, if nevertheless he comes within the jurisdiction of the authorities of his primitive country, cannot be reclaimed by his new one, but remains bound to fulfill the obligations of his service.

While the law of nations concedes to individuals the liberty of changing their nationality, it also empowers a state to restrict this faculty in certain circumstances, as in case of war and others, in return for the services and protection which it bestows upon the citizen or subject; and when he changes his nationality in contempt of the laws, he gives occasion for the disregard of his new nationality." (*Derecho Internacional*, tom. 1 p. 319.)

In October, 1856, the Hon. Caleb Cushing, then Attorney-General, in

a very elaborate review of the subject, expressed the opinion that the right of expatriation exists, and may be freely exercised by the citizens of the United States, holding that in the absence of legislation the consent of the government is to be implied. In this connection he says: "of course the citizen cannot apply such implied consent to any act of pretended emigration which is itself a violation of the law either public or municipal, as in the case of illegal military enterprises, nor by it can he escape the punishment of crime or the performance of local contracts, nor appeal to it as a mask to cover desertion or treasonable aid of the public enemy. I am not prepared to say that the right of a citizen of the United States to expatriate himself, implied in the absence of any prohibition, may not be exercised in time of war, but if so it would have to be done with attendant circumstances clearly showing good faith in order to be justifiable, and it is not easy to see how citizenship could be transferred in time of war to the foreign enemy in such a way as to escape reprehension if the party should afterwards return to the United States. And whether in peace or war, the expatriation would have to be an actual one by foreign residence, and with authentic renunciation of the pre-existing citizenship. Under the circumstances, and with the conditions thus indicated, and subject to such others as the public interest might seem to Congress to require to be imposed, it seems to me that the right of expatriation exists and may be freely exercised by the citizens of the United States."

Again, in the case of Christian Ernst, the right of expatriation was asserted by the Attorney-General: "Christian Ernst was a native of Hanover, and emigrated to this country in 1851, when he was about nineteen years of age. In February, 1859, he was naturalized, and in March, after procuring a regular passport, he went back to Hanover on a temporary visit. He had been in the village where he was born about three weeks, when he was arrested, carried to the nearest military station, forced into the Hanoverian army, and there he is at the present time, unable to return home to his family and business, but compelled against his will to perform military service."

Upon this state of facts the Attorney-General says: "The natural right of every free person, who owes no debts and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another allegiance in its place—the general right, in one word, of expatriation, is incontestable. I know that the common law of England denies it; that the judicial decisions of that country are opposed to it; and that some of our courts, misled by British authority, have expressed, though not very decisively, the same opinion. But all this is very far from settling the question. The municipal code of England is not one of the sources from which we derive our knowledge of international law. We take it from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations. All these are opposed to the doctrine of perpetual allegiance. It is too injurious to the general interests of mankind to be tolerated; justice denies that men should either be confined to their native soil or driven away from it against their will.

"*Expatriation* includes not only *emigration* out of one's native country, but *naturalization* in the country adopted as a future residence.

"When we prove the right of a man to expatriate himself, we establish the lawful authority of the country in which he settles to naturalize him if its government pleases. What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone

makes it plain. All lexicographers and all jurists define it in one way. In its popular, etymological, and legal sense, it signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject."

Such was the law before the passage of the act of July 27, 1868.

The just conclusion from it all is, that a citizen of the United States in time of peace, not deserting a public trust, nor being a fugitive from justice, by renouncing allegiance to this, and becoming in good faith a citizen of another country, in accordance with the laws thereof, is denationalized.

The act of July 27, 1868, therefore is, so far as the right of expatriation is concerned, only declaratory of what was the law of the land.

But the act does not attempt to define what steps must be taken by a citizen before he can be held to have become denationalized.

This being so, whether an act of expatriation has been accomplished in any particular case, must be left to the decision of the Executive or the courts, when such case shall arise, and their decision must be based substantially on the law as it is set forth in the cases cited. Upon an application of the principles established by these cases, I have to say, in answer to the first question asked by you, that the law-making power having declared by the act of July 27, that expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness, the Executive, when satisfied that a citizen, under the limitations I have set forth, has become denationalized, should not refuse to give effect to such an act of expatriation.

Upon an application of the same rules, the second question must be answered in the affirmative, if "voluntary submission to the sovereignty of another power" is understood to be the becoming a citizen of another power in accordance with the naturalization laws thereof.

But an expatriation cannot, I think, be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return only.

The rule of public law is that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile. (Thrasher's case.)

Under the liberal influence of commerce, the strict rule of the common law with regard to allegiance has been relaxed; and thus, though a natural-born subject cannot throw off his allegiance by change of domicile merely, and is always amenable for criminal acts against his native country, yet for commercial purposes he may acquire the rights of a citizen of another country by change of domicile. And the place of domicile determines the character of the party as to trade. (2 Kent, 49.)

Under the state of facts set out in the third question, an American citizen would therefore undoubtedly obtain a foreign domicile, which would impress upon him a national character for *commercial purposes* only, in like manner as if he were a subject of the government under which he resided, *without losing on that account his original character, or ceasing to be bound by the allegiance due to the country of his birth.* (1 Peters, C. C., 161; 2 Cranch, 120.)

The principle that for all commercial purposes the *domicile* of the party, without reference to the place of his birth, becomes the test of national character, has been repeatedly admitted in the courts of the United States. (Sloop Chester, 2 Dallas, 41; Murray vs. Schooner

Betsey, 2 Cranch, 64; Manly *vs.* Shattuck, 3 Cranch, 488; Livingston *vs.* Maryland Insurance Company, 7 Cranch, 506; the Venus, 8 Cranch, 253; the Frances, 8 Cranch, 363.)

But this national character which a citizen acquires by residence "may be thrown off at pleasure by a return to his native country, or even by turning his back on the country in which he had resided on his way to another." To use the language of Sir William Scott, "it is an adventitious character gained by residence, and which ceases by non-residence."

Such was the opinion of the court in the case of the Venus, (8 Cranch, 280,) and in United States *vs.* Guillem, (11 Howard, 47.)

Such is now the rule in England. It is there held that a British subject may acquire the rights, for commercial purposes, of a citizen of another country, and the place of the domicile determines the character of the party as to trade. (Wilson *vs.* Maryat, 8 T. R., 31.)

In the case of the Danaos, cited in 4th Robinson Adm., 255, the rule was declared that an Englishman residing in a neutral country was entitled to the privileges of a neutral character, and a British-born subject resident in Portugal was allowed the benefit of the Portuguese character *so far as to* render his trade with Holland, then at war with England, not impeachable as an illegal trade.

In the case of the Indian Chief, (3 Rob. Adm., 12,) Mr. Johnson, a citizen of the United States, was domiciled in England, and engaged in a mercantile enterprise to the British East Indies, prohibited to British subjects, but allowed to American citizens.

In delivering judgment the court said: "Taking it to be clear that the national character of Mr. Johnson was founded in residence only, it must be held that from the moment he turned his back on the country where he resided, on his way to his own country, he was in the act of resuming his original character, and must be considered an American. The character that is gained by residence ceases by non-residence. It is an adventitious character, and no longer adheres to him from the moment that he puts himself in motion *bona fide* to quit the country *sine animo revertendi*."

Such being the law, the fourth question becomes one of easy solution. It must be considered, however, with regard to two classes of citizens, viz, natural-born and naturalized.

It has been seen that a mere residence abroad, with no apparent intention of returning, does not denationalize an American-born citizen; it only impresses upon him a national character for commercial purposes. He is still bound by the allegiance due to the country of his birth. By virtue of that allegiance *that* country can demand his services whenever they are needed. For this reason he is, it seems to me, entitled to its protection.

In the case of the Charming Betsey, (2 Cranch, 120,) Chief Justice Marshall said: "The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor would be considered a justifiable interposition."

This doctrine of the Supreme Court seems to have been regarded by the Department of State as the true rule, and was declared to be the rule of the Government in the most emphatic manner by Mr. Webster, in the case of John S. Thrasher.

There seems, however, to be a doubt with regard to the right of the

United States to protect a naturalized citizen when he returns to the country of his birth, the doctrine of the State Department seeming to be, up to the year 1852, that if a foreign state *did not admit the right of one of its subjects to sever his allegiance*, it may lawfully claim his services when found within its jurisdiction, and that the Government of the United States will not interfere to protect him.

The question first arose, I think, in 1840, in the case of a Prussian who had become a naturalized citizen of the United States, and who claimed to be exempt from military draft on his return to his native country.

Mr. Wheaton, at that time the American minister, in reply to the party, wrote that it was not in his power to protect him. "Had you remained in the United States, or visited any other foreign country except Prussia on your lawful business, you would have been protected by the American authorities at home and abroad in the enjoyment of all your rights and privileges as a naturalized citizen of the United States. But having returned to the country of your birth, *your natural* domicile and natural character revert, (so long as you remain in the Prussian dominions,) and you were bound in all respects to obey the laws exactly as if you had never emigrated."

These views were adopted by Mr. Everett, Secretary of State, in instructions to Mr. Barnard, January 14, 1853. He said: "If a Prussian subject chooses to emigrate to a foreign country without obtaining the certificate which alone can discharge him from the obligation of military service, he takes that step at his own risk. He elects to go abroad under the burden of a duty which he owes to his government. His departure is in the nature of an escape from her laws, and if at any subsequent period he is indiscreet enough to return to his native country, he cannot complain if those laws are executed to his disadvantage. His case resembles that of a soldier or sailor enlisted by conscription or other compulsory process in the army or navy. If he should desert the service of his country and thereby render himself amenable to the military laws, no one would expect that he could return to his native land and bid defiance to its laws, because in the mean time he had become a naturalized citizen of a foreign state."

This view was accompanied by a note from Mr. Webster when Secretary of State, in June 1852, to the effect that if a government of a country does not acknowledge the right of natives of that country to renounce their allegiance, it may lawfully claim their services when found within its jurisdiction.

A distinction was taken, however, in 1859, by the State Department, which limited this view, and which confined the foreign jurisdiction in regard to naturalized citizens to such of them *as were in the army or actually called into it* at the time they left the country; that is, to the case of actual desertion or refusal to enter the army after having been regularly drafted and called into it by the government to which at the time they owed allegiance.

In accordance with this view, Mr. Faulkner, minister of the United States at Paris in 1860, said, in reference to the case of a naturalized citizen who had emigrated before the period of military service, "the doctrine of the United States is that the naturalized emigrant cannot be held responsible, upon his return to his native county, for any military duty the performance of which has not been actually demanded of him prior to his emigration. A prospective liability to service in the army is not sufficient. The obligation of contingent duties depending upon time, sortition, or events thereafter to occur, is not recognized. To subject him to such responsibility, it should be a case of actual deser-

tion or refusal to enter the army after having been actually drafted into the service of the government to which he at the time owed allegiance."

The Secretary of State under Mr. Buchanan made the same distinction between the contingent liability of those naturalized citizens who left the country of their origin before the age of military service without the consent required by law, and those who escaped after they were actually enrolled. He claimed that the former were, irrespective of the obligations arising from the contingent liability, which in the interim had become complete, entitled even in their native country to the full protection of American citizens.

This doctrine is in entire harmony with the views of the Attorney-General, expressed in 1859, in the case of Christian Ernst, and may, I think, be considered the views of the Government of the United States. (9 Opin.)

That officer says that a naturalized citizen who returns to his native country "is liable, like anybody else, to be arrested for a debt or crime; but he cannot rightfully be punished for the mere non-performance of a duty which is supposed to grow out of that allegiance which he has abjured and renounced. If he was a deserter from the army, he may be punished when he goes back, because desertion is a crime. On the other hand, if he was not actually in the army at the time of his emigration, but merely liable like other members of the state to be called on for his share of military duty, which he did not perform because he left the country before the time for its performance came around, he cannot justly be molested."

In deciding the question contained in your fifth interrogatory, viz, what should constitute evidence of the absence of an intent to return, I must first consider whether, in any given case, a domicile has been acquired in another country, for the reason that the evidence of an absence of intent to return can only be determined by the fact whether a foreign domicile has been acquired. If such a domicile has been acquired, the intent to return is gone; if not, the intent to return still remains.

Whether or not a domicile has been obtained, is purely a question of fact.

It is said by the Supreme Court in the case of the *Venus*, before referred to, that whether a person had sufficiently made known his intention of fixing himself permanently in a foreign country, must depend upon all the circumstances of the case. "If he has made no express declaration on the subject, and his secret intention is to be discovered, his *acts* must be attended to as affording the most satisfactory evidence of his intention. On this ground it is that the courts of England have decided that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes by these acts such evidence of an intention permanently to remain there as to stamp him with the national character of the state where he resides."

It will be seen from my discussion of the proposition contained in the third interrogatory that the doctrine once held was that a naturalized citizen could not be protected by the Government of the United States, if he returned to the country of his birth, on the ground that his native domicile and national character reverted. It is also seen that this doctrine has of late been a good deal modified—the foreign jurisdiction over a naturalized citizen being limited to those who were in the army or drafted, or were owing some accrued obligation at the time they left their native country.

A native or a naturalized citizen, therefore, may now go forth with

equal security over every sea and into every land, including the country where the latter was born. They are both American citizens, and their exclusive allegiance is due to the Government of the United States. One of them owed no fealty elsewhere; the other by his naturalization renounced and abjured all allegiance to the sovereignty whose subject he had been. This worked a dissolution of every political tie which bound him to his native country. (Ernst's case, 9 Opin. Att'ys-Gen., 357.)

This being so, it follows that if a naturalized citizen returns to his native country, and resides there for a series of years with no apparent purpose of returning, he only acquires, just as a native citizen of the United States would, a national character for commercial purposes, without losing his character of citizenship acquired by naturalization or ceasing to be bound by the allegiance thereby due from him. His original character does not under these circumstances revert, and therefore he does not become expatriated.

The sixth question must, therefore, be answered in the negative.

7th. Are the children born abroad of a citizen who has expatriated himself citizens of the United States, and entitled to its protection?

By the common law a person born out of the dominions and jurisdiction of the United States, and under the actual obedience of a foreign king, is an alien, *though his parents were American citizens.*

In Calvin's case it was held that "an alien is a subject that is born out of the ligeance of the king and under the ligeance of another." (7 Rep., 16.)

"There be regularly three incidents to a subject born: that the parents be under the actual obedience of the king; that the place of the birth be within the king's dominion; and that the time of his birth is chiefly to be considered, for he cannot be a subject born of one kingdom that was born under the ligeance of a king of another kingdom." (7 Rep., 17.)

In *Doe vs. Jones* (4 Dumford and East, 308) it is said "the character of a natural-born subject, anterior to any of the statutes, was incidental to birth only; whatever were the situation of his parents, the being born within the allegiance of the king constituted a natural-born subject."

Such was the common law of the United States anterior to the passage of the act of 1804.

Chancellor Kent says, "An alien is a person born out of the jurisdiction and allegiance of the United States. There are some exceptions to this rule, he says, by the ancient English law, as in the case of the children of public ministers abroad, (provided their wives be English women,) for they owe not even a local allegiance to any foreign power. So also *it is said* that in every case the children born abroad of English parents were capable of inheriting as natives, if the father went and continued abroad *in the character of an Englishman with the consent of the sovereign.*"

This last proposition is an extremely doubtful one.

Chancellor Kent gives as authority for it only the following cases, viz: *Hyde vs. Hill*, Cro. Eliz. 3, Bro. Abr., tit. Descent, pl. 47, and tit. Denizen, pl. 14. But it is clear, from what he says further on, that little reliance can be placed upon this alleged doctrine. For in commenting upon the fact that the period will soon arise when there will be no statutory provisions in the United States in relation to the status of children born abroad of American parents, from the fact that the act of 1804 in relation to this question not being prospective will soon be inop-

erative, he says such children will be obliged to resort to the dormant and *doubtful principles of the English common law*.

The rule, however, laid down in Calvin's case, and in *Doe vs. Jones*, makes it clear that such children would be aliens in the absence of a statute to the contrary.

It was because such was the common law that there arose the necessity in England of the statute of 25 Edw. In relation to this statute Chancellor Kent says, "It appears to have been made to remove doubts as to the certainty of the common law on this subject."

This statute settled the law in England.

But in the United States the rule of the common law was supposed still to have effect. For Congress in 1804 enacted that "the children of persons *who now are or have been* citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered citizens of the United States." The act was not prospective, however, and its benefits were soon lost.

In 1854 the question again arose, in the absence of every statutory provision, what was the condition of children of American citizens born abroad?

In an article published in February, 1854, in the American Law Register, and attributed to Mr. Horace Binney, it was contended with great force that such children were aliens. All the authorities on the question were reviewed, the position taken by Chancellor Kent that such children might be citizens criticised, and the conclusion I have stated reached. The view contained in this article seems to have been adopted by Congress, for soon after its appearance a bill passed, based substantially upon the idea contained in the article referred to.

A case involving this question has, however, since arisen in New York, and the doctrine of Chancellor Kent maintained. (See *Ludlam vs. Ludlam*, 26 N. Y., 357; *Lynch vs. Clark*, 1 Sandf., ch. 583.)

The act provided that "persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of this country, shall be deemed and are declared to be citizens of the United States."

If the father, therefore, was a citizen of the United States, his children born are now citizens by force of the statute.

So much is settled. But the father must be a citizen. If the father was not a citizen, then his children born abroad are undoubtedly aliens.

Upon the principles laid down in the cases cited, a citizen of the United States who has expatriated himself is no longer a citizen, and consequently his children born abroad are aliens, and not entitled to be protected by the United States.

The eighth question must, upon the principles laid down in the cases I have cited, be answered in the negative.

Upon these principles a native-born citizen of the United States cannot become expatriated until he has become a citizen of another country in accordance with the naturalization laws thereof. When this has been done, he is from that time no more a citizen of the United States than a foreign-born subject.

According to the same law, laid down in my answer to the sixth question, his original character does not, therefore, revert on his return to the United States, and before he can be regarded as a citizen he must again be naturalized.

I have the honor to be, very respectfully,

WILLIAM A. RICHARDSON,

Secretary of the Treasury.

No. 499.

The Secretary of War to the President.

WAR DEPARTMENT,
Washington City, November 6, 1873.

SIR: In response to your request of August 6, addressing to me certain questions concerning the relations between the Government and persons who may claim its protection as citizens of the United States, I have the honor to reply as follows:

First question. The law-making power having declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. In my opinion the Executive should not refuse.

Second question. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power be regarded otherwise than an act of expatriation?

Answer. In my opinion it may not.

Third question. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?

Answer. It can.

Fourth question. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. It ought not. Such a residence abroad, prolonged and accompanied by no avowed, known, or apparent intent to return, would constitute a *prima-facie* case of expatriation which would justify the Government in withholding its protection until explained away and overcome by counter satisfactory testimony.

Fifth question. What should constitute evidence of the absence of an intent to return in such cases?

Answer. The evidence indicating an absence of an intention to return may consist of a great number of particulars, which it would be difficult to enumerate. The question is purely one of fact, to be determined by testimony, and each case must be decided on its peculiar circumstances, since it is clear that Congress, in its declaration on the subject, neither required nor contemplated any special form or mode in which the right of expatriation, so broadly recognized by it, should be exercised. Long residence abroad, accompanied by an absence of business relations with and a failure to assert and exercise the political rights of citizenship in the country left, would naturally be among the most conclusive indicia of expatriation.

Sixth question. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself where the case is not regulated by treaty?

Answer. This, like the former, is a question of fact, to be determined on the testimony. The naturalized citizen may expatriate himself, and thus lose his newly-acquired citizenship, in the same manner as the citizen born can do. Perhaps, in his case, a smaller measure of proof as to the *animus* of his continued residence in his native country would be required than might be deemed necessary in the case of the citizen born.

Seventh question. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States, and entitled to its protection?

Answer. This question is supposed to relate to children born abroad, and who are minors at the time their parent expatriates himself. Under such circumstances, his domicile being theirs, in contemplation of law, it is believed that they would necessarily share the change wrought in his status by expatriation. In our country minors become citizens through the act of their parents in bringing them here, and their resulting residence, and there seems to be no reason why they should not equally abide the effect of his action when it results in their expatriation.

Eighth question. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. He cannot. A citizen who expatriates himself becomes, it is thought, to all intents and purposes, an alien, and, like all other aliens or subjects of a foreign government, he can only become again a citizen of the United States by a compliance with our naturalization laws.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

To the PRESIDENT,

(Through the honorable the Secretary of State.)

No. 500.

The Secretary of the Navy to the President.

NAVY DEPARTMENT,

November 1, 1873.

To the President of the United States.

SIR: I have the honor to acknowledge the receipt, through the Secretary of State, of your letter requesting my opinion, in writing, upon certain questions therein stated concerning the relations between the Government and persons who may claim its protection as citizens of the United States, and in reply I beg to submit the following:

Some general observations are proper before examining each question in detail.

Every government may make such laws as it sees fit in regard to the expatriation of its own citizens, and may also enforce within its own jurisdiction such laws as it makes in regard to the naturalization of foreigners.

These subjects belong, within the limits here indicated, to the municipal laws of each nation.

It follows from the first proposition that, on the subject of the right of expatriation, the declaration of Congress in the act of July 27, 1868, is *law* as to our own citizens, while as to the rights of citizens of other countries, in reference to their allegiance, it is only a *declaration of opinion* as to what is the law of nature or of nations, and is binding on other nations so far only as they assent to it by treaty, or as it may, in truth, accord with the law of nations. Being *law* as to the right of our own citizens to expatriate themselves, it must, of course, be given full effect by the Executive as regards them; the only question which can arise in this application of the doctrine being the question of fact as to whether a citizen has actually expatriated himself.

But as regards the application of the principle declared in the act to persons bearing other natural relations and having original duties to other nations, the subject is much more complicated and difficult.

While the act of 1868 is declaratory of what is considered the American doctrine, it must be remembered that Congress cannot alter the law of nations; and anything contained in the act contrary thereto is not binding on the President, who is charged with the administration of our foreign relations.

If, for example, Congress should declare that the President must interfere to protect a naturalized citizen contrary to the tenor of treaties or contrary to the law of nations, the enactment would *pro tanto* be void.

Therefore the declaration of the act and the references and the conclusions which follow them must be considered subject to certain qualifications of the right of protection and interference, which grow out of the rights of other governments and are still recognized by the law of nations. In considering these it must be borne in mind that the rights of expatriation and naturalization are not strictly correlative rights. A man may have a right, by the laws of the country to which he emigrates, to be naturalized, and yet may not have a right, by the laws of his own country, to expatriate himself; and much more clear, though not more *true*, is the principle that a man may have the right of expatriation from one country without the right of naturalization in another.

As every country makes such laws on these several subjects as it sees fit, without inquiring as to the laws of other countries, it may be considered settled that the assent of a man's mother country to his change of allegiance is not regarded as necessary in the country which naturalizes him.

This is so universally the principle on which all nations act, that it may be assumed to be in conformity with international law.

After a man is naturalized in the country to which he emigrates, he is then, admittedly, entitled to all the protection, at home and abroad, (excepting only the country from which he emigrated,) which is accorded to a natural-born citizen.

As regards the country from which he emigrated, if he returns there, the question of the protection to be given by his adopted country becomes again complicated with other questions of natural rights and duties. He cannot justly claim to be discharged from obligations or penalties which he actually incurred before his emigration, unless they are discharged by lapse of time, or other intrinsic reason. This is generally conceded in all the treaties which our Government has effected on the subject. (See the treaties mostly collected in the note to Chap. I of Wharton's Conflict of Laws, pp. 1-20.)

In the simple case where a naturalized emigrant returns to his native country with the purpose of remaining there permanently and never returning to his adopted country, he is considered as having relinquished his acquired citizenship and re-assumed the duties of his natural one. In such case, of course, all obligation to protect him, on the part of his adopted country, ceases. This is also provided in most of the treaties.

(See Halleck's International Law, 692-700. Wharton's Conflict of Laws, pp. 1-20; Wheaton's International Law, by Lawrence, appendix, pp. 891, &c.)

But if he returns to the jurisdiction of his native country without returning to his natural allegiance, the question of opposing existing rights arises. The right of expatriation, it is seen, is not entirely absolute; but is somewhat qualified. An emigrant, notwithstanding he becomes naturalized, may be liable to some obligations to his mother country actually incurred.

Formerly the governments of Europe, which were mostly founded on feudal principles, regarded the sovereign as having a kind of property in his subjects, or *lieges*, which bound them to him for life. *Liegeance*, or *allegiance*, therefore, was a tie which the subject could not sunder at his pleasure. But the practice of all nations to naturalize the subjects of other nations without inquiry as to the will of their former sovereign, shows that the doctrine of the law of nations, as now accepted, really is, that a man may throw off his old allegiance and embrace a new one.

This has always been the American doctrine, and has now become a subject of treaty with Great Britain, all the German states, Denmark, and Sweden. These treaties, recently effected, dispose of many of the intricate questions which formerly arose out of the claim of perpetual allegiance put forth by foreign nations. (See these treaties; Wharton's *Conflict of Laws*, pp. 1-20, and *Statutes United States*, vols. xvi, xvii.)

By these treaties, the rule now prevailing may be expressed generally thus: Continuous residence in this country for five years, and naturalization, effects an entire change of citizenship and allegiance, and all obligations to the mother country are extinguished, except those *actually incurred before* emigration; these remain if the emigrant return to his native country; but all liability to military duty which he evaded *by* emigration is discharged. But if an emigrant return to his native country, without the intent to return to his adopted country, he is held to have renounced his naturalization. Two years' residence in the native country manifest such intent not to return.

The following references will be useful in examining the history of the controversy respecting perpetual allegiance and the right of expatriation:

Lawrence's tract on the subject, appendix to Wheaton's *International Law*.

Halleck's *International Law*, 692-700.

Wharton's *Conflict of Laws*, pp. 1-20

Marcy's letter to Hulseman, in Koszta's case, September 26, 1853.

Marcy's letter to Jackson, in Tousig's case, January 10, 1854.

Cass's letter to Wright, in Tousig's case, July 9, 1859.

Cushing's opinion on the right of a citizen of the United States, to expatriate himself, 1856, Attorney General's Opinion, viii, 139.

Black's opinion's, on expatriation, Attorney General's Opinions, ix, 62-356.

Grot, 1, 5, 24. Puff, 8, 11, 2. Vattel, 1, 222, p. 105. Foelix, *Droit, Int. Priv.*, § 28.

With these preliminary remarks I make the following replies to the questions respectively :

Question 1. The law-making power having declared that "the right of expatriation is a national and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. If a citizen of the United States should expatriate himself so absolutely that he remains under no obligation of citizenship incurred before such expatriation, then the answer is, No; the President should not refuse to give effect to the act of expatriation. But the act of expatriation must of course be established by proper proofs, on which it is unnecessary to make a prolonged discussion. Suffice it to say, that naturalization in another country is plenary proof; and in case of a naturalized citizen then resident in his native country, without any intent to return to the United States, is sufficient proof.

Question 2. May a formal renunciation of United States citizenship, and the voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

Answer. Such renunciation and submission cannot be regarded otherwise. But what will *constitute* them is a question of some uncertainty.

A formal renunciation of United States citizenship includes, I assume,

a renunciation of all claims upon the Government of the United States for future protection, and places the party under the protection of the government he adopts. Our own laws do not prescribe any special form of renunciation. The proper and most effective form would be a naturalization in another country; and wherever, and by whatever means, a citizen properly assumes the status of a new citizenship, there he may be considered as having renounced the status and relinquished the rights of his old one. It is difficult to say what form can be adopted short of that which will preclude the party from afterwards demanding United States protection. How could the formal renunciation be authenticated against him?

It seems to me that until a citizen of the United States becomes a citizen of some other country he remains a citizen of the United States. If he takes initiatory and inchoate proceedings to change his citizenship he must follow them up. Within reasonable limits of time it may be presumed that he will do so. But if that be not done, the presumption fails.

Question 3. Can an election of expatriation be shown, or presumed, by an acquisition of domicile in another country, with an avowed purpose not to return?

Answer. As to naturalized citizens, if they return to their native country with an avowed purpose never to return they are to be deemed as having renounced their acquired citizenship; but in case of a native citizen, I do not think that an election of expatriation can be shown, or presumed, simply by an acquisition of domicile in another country, even with an avowed purpose not to return. Such a person, by long residence abroad, may lose all claim of the Government to protect him, but cannot be said to have changed his citizenship. A claim of protection is not of absolute right. It may be much modified by the conduct of the citizen. He may be estopped to claim protection by his own conduct without the loss of citizenship. Thus, where he plots against, or abuses and vilifies, his own Government, or plots against or attacks a friendly one, he may lose all absolute claims on his Government, and yet he may not lose his citizenship.

Question 4. Ought the Government hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. As before said, the duty of protection depends much on the conduct of the citizen abroad. If he manifests a contempt or hostility to his own Government or country, and avoids every duty of a citizen, the Government is not bound to protect such person. The Government is left to its own discretion in such cases, and must act, under its responsibility, in each particular case. A request for protection is always to be listened to with attention, and not denied to a citizen, unless such citizen, by his conduct, has forfeited clearly his claim to it. If by absence in time of war or distress he has avoided every obligation and duty which a good citizen owes to his country, he cannot demand its protection as a matter of right when he is in distress. If he has been absent on account of business or recreation, or travel, or other fair and legitimate object of pursuit, the case and the conclusion will be different. (See Vattel, Book I, sec. 220, p. 103.)

Question 5. What should constitute evidence of the absence of an intent to return, in such cases?

Answer. The evidence of want of intent to return depends on so many circumstances that it is difficult to lay down a definite rule as to what

constitutes such evidence. If the citizen be a naturalized citizen, slighter and less evidence will be required than if he is a native; and if residing in his native country, two years' residence there has been deemed sufficient evidence of the abandonment, by a naturalized citizen, of his adopted country, and intent not to return to it. But no mere length of residence abroad, it seems to me, is sufficient, standing alone, to raise, in the case of a native citizen, such a presumption. Other circumstances are required, such as disposing of property at home, and purchase of property abroad, and having all his interests centered in his foreign abode.

Question 6. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

Answer. A naturalized citizen returning to reside in his native country will be presumed, after two years' residence, not to intend to return to his adopted country. But this would be presumption only from mere residence and lapse of time. Circumstances, actions, and even declarations might vary it. I name two years because that is the period named in several treaties for that purpose.

Question 7. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?

Answer. Children *sub potestate parentis* follow the condition of the father; or, if no father, of the mother. If of full age, and emancipated, they are subject to the same rules as any adult person.

Question 8. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. A citizen of the United States who has renounced his citizenship and become naturalized abroad, by returning to his own country and residing there without intent to return to his adopted country, will be regarded as having renounced his adopted citizenship; but he will not be again a citizen of the United States without naturalization or the force of some special law on the subject. (See the naturalization treaties before referred to, which are based on good sense, and on reason.)

It should be added, although it does not come within the direct scope of the questions submitted, that the right of protection is not confined to citizens, but extends to denizens and those having their domicile in the United States. All persons, citizens or not, who make the United States their home, whose domicile is here, and who claim the protection of the Government, will obtain it if the claim be made in good faith and the conduct of the party has not been such as to forfeit the claim.

This was the case of Martin Koszta, who had only declared his intention to become a citizen, and who resided in the United States, but was temporarily absent in Turkey, innocently employed.

All of which is respectfully submitted.

Very respectfully, your obedient servant,

GEO. M. ROBESON,
Secretary of the Navy.

No. 501.

The Postmaster-General to the President.

POST-OFFICE DEPARTMENT,
Washington, D. C., November 17, 1873.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th August, asking the opinion, in writing, of the principal officer in each of the Executive Departments upon certain questions, therewith submitted, relating to the expatriation of citizens of the United States, and the relations between the Government and expatriated persons who may claim its protection by virtue of restored citizenship.

After giving the subject such study and deliberation as its importance demanded, I cannot find any ground to differ from the views of the Attorney-General of the United States, given in his well-considered and very able opinion in answer to the same questions, also submitted to him.

The conflict of opinion heretofore expressed by eminent statesmen and jurists upon some of the points raised by the questions; the tide of immigration flowing to, and the facilities of travel from, this country; the prolonged and sometimes permanent residence of our citizens in foreign countries—all induce me to unite earnestly with the Attorney-General in the recommendation that some positive legislation be invoked to put at rest, so far as legislation can do so, these delicate international questions, which may at any time involve us in serious complications with foreign powers.

I am, very respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

His Excellency U. S. GRANT,
President of the United States.

No. 502.

The Attorney-General to the President.

DEPARTMENT OF JUSTICE,
August 20, 1873.

SIR: I have the honor to acknowledge the receipt of your communication of the 6th instant, submitting for my official opinion certain questions hereinafter stated, to which I respectfully make answer as follows:

Question I. The law-making power having declared that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness, (15 U. S. Stat., p. 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. My opinion is that the affirmation by Congress that the right of expatriation is "a natural and inherent right of all people," includes citizens of the United States as well as others, and the executive should give to it that comprehensive effect.

Question II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

Answer. Congress has made no provision for the formal renunciation of citizenship by a citizen of the United States while he remains in this country; but if such citizen emigrates to a foreign country, and there, in the mode provided by its laws, or in any other solemn or public manner, renounces his United States citizenship, and makes a voluntary submission to its authorities with a *bona fide* intent of becoming a citi-

zen or subject there, I think that the Government of the United States should not regard this procedure otherwise than as an act of expatriation.

Question III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?

Answer. Residence in a foreign country and an intent not to return are essential elements of expatriation; but to show complete expatriation as the law now stands, it is necessary to show something more than these. Attorney-General Black says (IX Opinions, p. 359) that expatriation includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence. My opinion, however, is that, in addition to domicile and an intent to remain, such expressions or acts as amount to a renunciation of United States citizenship and a willingness to submit to or adopt the obligations of the country in which the person resides, such as accepting public employment, engaging in a military service, &c., may be treated by this Government as expatriation, without actual naturalization. Naturalization is, without doubt, the highest but not the only evidence of expatriation.

Question IV. Ought the Government to hold itself bound to extend its protection, and exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. Persons born in the United States, who, having left them, reside abroad with no apparent intention of returning, and who do not contribute to their support, do not necessarily discharge the United States Government from its obligation to interpose for their protection in proper cases. Foreign domicile, which is substantially described in this inquiry, is not the equivalent of expatriation. When a citizen of the United States becomes domiciled in a foreign country he becomes, as a general rule, subject to its laws and its authorities like one of its citizens; but if, by his acts or declarations, he continues to assert his United States citizenship, and takes no oaths, or public or official obligations inconsistent therewith, it is the duty of the Government of the United States, though he may have at the time no real or apparent intent to return to them, to protect him against special acts of wrong or injustice by the Government of the country in which he resides, and from the imposition upon him by that government of duties which are exclusively due from its own citizens or subjects, or which may be inconsistent with his allegiance to the United States.

Question V. What should constitute evidence of the absence of an intent to return in such cases?

Answer. When a citizen of the United States goes abroad without intending to return, he takes one indispensable step toward expatriation; but to effect a complete annihilation of all duties and obligations between the government of his native country and himself, which extradition implies, it is necessary that he should become a resident in some foreign country with an intent to remain there, superadded to which there must be acts in the direction of becoming a citizen or subject of such foreign country, amounting at least to a renunciation of United States citizenship. Absence of an intent to return to one's native country, or to speak, perhaps, with more accuracy in considering a question of expatriation, an intent to remain in a foreign country, may be evidenced in various ways and by a great variety of circumstances, and though it might not be difficult to determine from the facts in a specific case as to the intent of a party changing his domicile, it is impossible to lay down any general rule upon the subject by which all cases can be decided. Intent is the great criterion by which the char-

acter of domicile is determined. When a person avows his purpose to change his residence and acts accordingly, his declarations upon the subject are generally received as a satisfactory evidence of his intent; but in the absence of such evidence the sale of his property and the settling up of his business before emigration, the removal of his family, if he has one, arrangements for a continuing place of abode, the acquisition of property after removal, the formation of durable business relations, and the lapse of a long period under such circumstances are among the leading considerations from which the intent to make a permanent change of domicile is inferred.

Question VI. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years with no apparent purpose of returning, shall he be deemed to have expatriated himself where the case is not regulated by treaty?

Answer. Conflicting views have been advanced upon this question by distinguished lawyers and statesmen of this country; but I know of no principle upon which it can be held that, with respect to protection in foreign countries, the rights of a naturalized are different from those of a native-born citizen. Domicile in his native country without an intent to return to the United States, by a naturalized citizen, would not of themselves, so long as he maintains his claim and distinctiveness as such naturalized citizen, deprive him of his right of protection in proper cases by the Government of the United States. But less evidence would perhaps be requisite to show that a person residing in his native country had thrown off a foreign citizenship acquired by naturalization, or, in other words, had expatriated himself from his adopted country, than to show that a person born in the United States, but residing elsewhere, had expatriated himself from his native country. Naturalization effected in the United States without an intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities that would otherwise attach to the naturalized person, ought to be treated by the Government of the United States as fraudulent, and as imposing upon it no obligation to protect such person; and as to this the Executive must judge from all the circumstances of the case. Section 2 of the act of July 27, 1867, (*supra*,) as to protection in foreign countries, puts naturalized and native-born citizens upon the same ground.

Question VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States, and entitled to its protection?

Answer. Section 1 of the act of February 10, 1855, (10 U. S. Stat., p. 604,) provides that "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were, or shall be at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however,* that the rights of citizenship shall not descend to persons whose fathers never resided in the United States;" from which, as well as from other considerations, it is evident that children born abroad of persons once citizens of the United States, but who have become citizens or subjects of a foreign power, are not citizens of the United States, or, as such, entitled to their protection.

Question VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. Persons born in the United States who have, according to the laws of a foreign country, become subjects or citizens thereof, must

be regarded as aliens ; and section 1 of the act of April 14, 1802, (2 U. S. Stat., p. 153,) declares that an alien may be admitted to become a citizen of the United States as provided in said act, and not otherwise. Actual naturalization abroad would seem to be necessary to make a person born in the United States an alien.

Section 1 of the fourteenth amendment to the Constitution declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." But the word "jurisdiction" must be understood to mean absolute or complete jurisdiction, such as the United States had over its citizens before the adoption of this amendment. Aliens, among whom are persons born here and naturalized abroad, dwelling or being in this country, are subject to the jurisdiction of the United States only to a limited extent. Political and military rights and duties do not pertain to them.

I have made the foregoing answers as specific as I can to what are abstract propositions; but I beg to add, generally, that, in the absence of treaties and legislation by Congress touching the subjects involved in said questions, the rules of law relating thereto are to be drawn from writers upon international and public law, who do not always agree, and therefore it will be difficult for the Government to act upon any such rules without a chance of controversy.

Legislation is needed to declare by what acts United States citizenship is lost. According to the French code, not only naturalization in a foreign country, but a fixed residence there without the intention of returning, destroys the quality of a Frenchman; and regulations to the effect that a subject by acts other than naturalization in a foreign country may expatriate himself have been adopted by Russia, Austria, Italy, and other countries of Europe. I can see no good reason why Congress may not put an end to controversy upon the subject by declaring that a citizen of the United States who emigrates to a foreign country with the avowed purpose of remaining there, or who resides abroad for a definite period without an avowed purpose of returning to the United States, shall be considered as thereby expatriating himself or losing the right to call upon the Government of the United States for protection during such foreign residence. Several treaties have been made with European powers to the effect that when a naturalized citizen renews his residence in his native country with intent to remain, he shall be held to have renounced his naturalization; and something like this, it seems to me, might with great propriety be incorporated into the laws of this country, to be applied as well to our citizens who, having been naturalized abroad, return to reside in the United States, as to those who, naturalized here, return to reside in their native country.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

The PRESIDENT.

No. 503.

The Secretary of the Interior to the President.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 30, 1873.

SIR : I have the honor to acknowledge the receipt of your communication of the 6th of August last, which requests me to answer certain

interrogatories relative to the rights and duties of citizens of the United States and the manner in which, under our institutions, citizenship may be acquired and lost.

This communication came to hand during my absence from the city, which was protracted longer than I anticipated by providential circumstances over which I had no control. Since my return I have considered, as fully as time and official engagements would permit, the important subject embraced in your interrogatories, and now have the honor to express in writing my opinion upon the questions referred to, which are as follows:

- "I. The law-making power having declared that 'the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,' (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?
- "II. May a formal renunciation of United States citizenship, and voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?
- "III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?
- "IV. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories and who reside abroad without an apparent intent to return to them, and who do not contribute to its support?
- "V. What should constitute evidence of the absence of an intent to return in such cases?
- "VI. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?
- "VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?
- "VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

These questions open an interesting field of inquiry, and render it proper to consider what is citizenship of the United States, where is the power which can confer or take it away, and how may it be acquired or lost.

It is not easy to define citizenship, and but few have done it, although the general idea of what is included in the term citizen is pretty well understood. All agree that it includes males and females and minors. It includes all those who owe allegiance, fidelity, and support to the Government, and who, in return for the same, are entitled to be protected and defended by it. "Allegiance," says Blackstone, "is the tie or ligament that binds every subject to be true and faithful to his sovereign *in return* for protection which is afforded him." "The duty of allegiance," says Attorney-General Bates, "and the right to protection are correlative obligations, *the one the price of the other*, and they constitute the bond between the individual and his country." "If the body of society," says Vattel, "or he who represents it, (the government,) absolutely fail to discharge their obligations toward the citizen, the latter may withdraw himself, *for if one of the contracting parties does not observe his engagements the other is no longer bound to fulfill his, as the contract is reciprocal between society and its members.*"

I would define a citizen of the United States to be a native-born or naturalized person, of either sex, who owes allegiance to and is entitled to protection from the United States, or a person who is made a citizen by treaty stipulations or statutory or constitutional law.

The power of conferring or taking away citizenship rests in Congress. The Constitution has conferred upon it the power "to establish a uniform rule of naturalization." (Article 4, section 8.) It is impossible to execute this power and make citizenship uniform unless the United States have exclusive control over the subject; and hence it must be admitted that all the powers which the States previously had were surrendered and vested in the nation. This seems so palpably just and necessary that it requires no argument or authority in its support; but, as it may be denied, I venture to refer to the following authorities:

In 2 Kent Com., 30, it is said, "The question of citizenship is one of national, and not of individual (or State) sovereignty."

Judge McLean, in the Dred Scott case, 19 How., 533, declares, "that a State may authorize a foreigner to hold real estate, but it has no power to naturalize foreigners and give them the rights of citizens. Such a right is opposed to the acts of Congress and subversive of the Federal powers."

Attorney-General Bates, (10th Opinions, 382,) says: "Every person who is a citizen of the United States, whether by birth or naturalization, holds his great franchise by the laws of the United States, and above the control of any particular State."

It has frequently been held that no State can confer the elective franchise upon one who is not a citizen of the United States. Citizenship is national. It is the nation, and the nation only, that can make and unmake citizens. If the elective franchise can be conferred by a State upon persons not citizens of the United States, it would enable the State to subvert and overthrow the institutions and form of the National Government. Upon this point I will refer to the opinions of some of our ablest jurists and statesmen.

Judge Curtis, in 19 How., 581, before quoted, says: "The enjoyment of the elective franchise is not essential to citizenship. It is one of the chiefest attributes of citizenship under the American Constitution; and the just and constitutional possession of this right is decisive evidence of national citizenship."

Judge Story illustrates this point with admirable power. He says: "If aliens might be permitted indiscriminately to enjoy all the rights of citizens at the will of a single State, the Union itself might be endangered by the influx of foreigners, hostile to its institutions, ignorant of its forms, and incapable of a due estimation of its privileges." (1 Story on Const., 1103.)

In Wheaton, page 910, Mr. Lawrence says: "If the States can admit to the elective franchise those who are not citizens, thereby neutralizing the votes of citizens, not only the federal power of the nation *becomes a nullity*, but a majority of actual citizens, by the aid of aliens, may control the government of the States, and through the States the government of the Union."

Mr. Calhoun (Wheaton, 905) has stated the point very clearly, and, without intending to indorse his opinions on all other subjects, I heartily approve of what he has said on this. I quote: "Whatever difference of opinion there may be as to what other rights appertain to a citizen, all must agree that he has the right to *petition*, and also to claim the *protection* of the Government. These belong to him as a member of the body-politic, and the possession of them is what separates citizens of the lowest condition from aliens and slaves. To suppose that a State can make an alien a citizen, or confer on him the right of voting, would involve the absurdity of giving him the direct and immediate control over the action of the General Government, from which he can claim no protection, and to which he has no right to present a petition."

"Now, admit that a State may confer the right of voting on aliens, and it follows that we might have among our constituents persons who have not the right to claim the protection of the Government nor present a petition to it. But a still greater difficulty remains. Suppose a war should be declared between the United States and the country to which the aliens belong. They, as alien enemies, would be liable to be seized under the laws of Congress, and to have their goods confiscated, and themselves imprisoned or sent out of the country."

The power being with Congress, as I have attempted to show above, to regulate, control, confer, and take away citizenship, has it acted or done anything to indicate its will upon this subject? It has from the origin of the Government provided by law for the naturalization of foreigners, and thus conferring citizenship upon them. It has required of them to renounce all allegiance to any foreign prince or potentate. The fact that such renunciation is required by Congress is satisfactory evidence to my mind that Congress regarded the foreigner as having the lawful right to renounce such allegiance, and thereby to *expatriate himself*. After practically recognizing this doctrine for three-fourths of a century, Congress expressly declared it by the act of July 27, 1868, (15 Stat., 224.) It enacted—

"That any declaration, instruction, or opinion, order or decision of any officers of this Government which *denies, restricts, impairs, or questions* the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government.

"That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this Government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances."

It would be difficult to frame a more stringent legislative declaration of the right of expatriation. If a foreigner has the right to renounce allegiance to his government and assume that of our own, then, to be consistent, it must be conceded, *e converso*, that a citizen of our Government has the right to throw off his allegiance and transfer it to that of another government, provided it be done *bona fide*. I think this may be done. In my opinion, man has the natural right to relinquish the society in which he was born and seek his home and happiness elsewhere. In other words, he has the *natural and inherent right to expatriate himself*. How this may be done has not been defined by Federal legislation. The method is left to the individual. It must be done in good faith, with an actual change of residence, without the purpose to evade responsibility for criminal acts, or to escape duties already imposed, and, in general, in time of peace. When thus done, allegiance is ended, and the right of protection and defense gone.

Attorney-General Black, in speaking of a native or naturalized citizen, says:

"In my opinion, if he emigrates, carries his family and effects along with him, manifests a plain intention not to return, takes his permanent residence abroad, and assumes the obligation of a subject of a foreign government, this would imply a dissolution of his previous relations with the United States; and I do not think we could or would afterward claim from him any of the duties of a citizen." (9 Op. Atty.-Gen., 63.)

Believing, as I do, that the citizen has the right to expatriate himself, I must answer your first interrogatory that, in my opinion, the Executive should not refuse to give effect to an act of expatriation of a citizen of the United States.

I answer your second interrogatory, that a formal renunciation of United States citizenship and a voluntary submission to the sovereignty of another power should, in my opinion, be regarded as an act of expatriation.

I answer your third interrogatory that, in my opinion, an election of expatriation can be shown by an acquisition of domicile in another country with an *avowed* purpose not to return.

I answer your fourth interrogatory that, in my opinion, the Government is not bound to extend its protection or to exert its military or naval power for the protection of persons who have left its territories and reside abroad without an apparent intent of returning and who do not contribute to its support.

The duty of protection is correlative with that of support, and the voluntary withdrawal of support by the citizen releases the Government from its duty to defend and protect such citizen.

I answer your fifth interrogatory, that it is very difficult, if not impossible, to lay down any general rule that will apply to all cases. Each case must stand upon its own circumstances. They must be such as to fairly satisfy a reasonable man that the citizen has gone abroad with intent to remain and without intent to return. The best evidence of this would be the declaration of the party, accompanied by an actual removal. But declarations are not absolutely essential. Acts may be entirely satisfactory. For example, if a citizen who is the head of a family and the owner of property in this country should dispose of all his property here, take his family with him and go to a foreign state, and there purchase a home, or such other property as the owner ordinarily looks after in person, and should remain with his family some considerable time, without any avowed purpose of return, I think that would be sufficient evidence that he had expatriated himself.

I answer your sixth interrogatory that, in my opinion, a naturalized citizen, who has returned to his native country and resided there for a series of years, without any apparent purpose of returning to this, and whose case is not regulated by treaty, should be deemed to have expatriated himself.

I answer your seventh interrogatory that, in my opinion, children born abroad of parents who have been citizens of the United States, but have become subjects or citizens of another power, or who have expatriated themselves, are not citizens of the United States, and are not entitled to its protection.

I answer your eighth and last interrogatory that, in my opinion, a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, cannot become again a citizen of the United States in any other way than that provided by general laws. If a person may rightfully expatriate himself and become the subject of another power, then he is no longer a citizen of the United States, but a citizen of such other power, and it follows logically that, if he would again become a citizen of the United States, he must pursue the method pointed out by law, which enables a person who is not a citizen of the United States to become one. This is the dictate of common sense, and should be, and is, the law.

Very respectfully, your obedient servant,

C. DELANO,
Secretary of the Interior.

The PRESIDENT.

No. 504.

Mr. Fish to Mr. Marsh, (same to Mr. Washburne and to Mr. Bancroft.)

No. 395.]

DEPARTMENT OF STATE,
Washington, August 11, 1873.

SIR: It is desirable to know with a reasonable approach to accuracy the number of American citizens resident or temporarily sojourning in Italy.

If practicable you will ascertain—

I. The number of Americans whose residence in Italy has been of long continuance, or seems to be indefinite in its intended duration.

II. The number sojourning or traveling and temporarily abiding in the country, and you will consider and report whether the number to be stated in your return may be regarded as above or below the average number of such Americans for a series of years.

III. The number of children born in Italy (annually) of fathers who claim to be American citizens.

IV. The number of Americans who may have been naturalized as Italians, or otherwise *formally* disavowed American citizenship.

I wish also to know whether any record or registration is made, or any notice is generally filed, either in the legation, or at the consulates of the United States in Italy, of the birth of children born in Italy of fathers who claim to be American citizens.

It is understood that some American citizens have registered the births of children born to them out of the United States, either as those of subjects of the country in which they were born, or so as to entitle them to the option of claiming citizenship in that country. It is reported that instances of this kind were quite frequent during the rebellion in this country. You will endeavor to ascertain whether this be so, and, if it be, whether you can obtain a list of those who were thus registered and the names of the parents or others who registered them.

I desire the information asked, especially that under the four enumerated heads, with as little delay as possible.

I am, sir, your obedient servant,

HAMILTON FISH.

GEORGE P. MARSH, Esq.,
&c., &c., &c.

[Same *mutatis mutandis* to the ministers of the United States at Berlin and Paris.]

No. 505.

Mr. Bancroft to Mr. Fish.

No. 518.]

AMERICAN LEGATION,
Berlin, September 8, 1873. (Received September 26.)

SIR: The main question on which you inquire in your instruction No. 599 has engaged my attention ever since I have resided in Germany as minister.

When measures were adopted for taking the census of the United German Empire, I requested that the officers employed in taking it might be instructed to make a special count of the Americans in Germany.

The German government acceded to my request, and it appears from the returns that on the 1st day of December, 1871, the Americans present in Germany numbered 10,672. This census includes the American-born not less than the naturalized Germans; and travelers and sojourners as well as residents. But it was taken at a period of the year when the number of transient travelers is at a minimum.

As a help to a conjecture on the question how these are to be distributed as residents or sojourners, (and nothing more than a conjecture is possible,) I have made fresh inquiries at Bremen and at Hamburg, on the number of passengers which the two great lines of steamers annually bring to those ports. In the year from July 1, 1872, to July 1, 1873, the regular Hamburg steamers brought 9,594 passengers to Europe, of whom 9,000 may have been destined for Germany. Extra Hamburg steamers brought about 1,000 passengers more, so that we may set down the arrivals in Germany by that line of steamers at 10,000 a year, and of these 7,500 may be German-Americans. During the same period of twelve months the passengers in the Bremen line amounted to 3,910 first-class passengers and 7,216 steerage passengers; in all, 11,126. Of these, I think 10,000 were American citizens, of whom perhaps 1,000 remain in Germany or some part of Europe for more than one season. These statistical accounts obtained from Hamburg and Bremen in my judgment go to show that the census return for December 1, 1871, fell short of rather than exceeded the true number of Americans then present in the German Empire. Your instruction to me is, if possible, to *ascertain* the numbers you inquire after. To that I must reply that to *ascertain* is impossible, but relying on the candor of the Department, and repeating that estimates, if made at all, must be made on mixed and imperfect data, I venture to give to your questions conjectural answers.

I. Of Americans whose residence in Germany has been of long continuance, or seems to be indefinite in its intended duration, I estimate the number at 10,000, and that number rather on the increase.

II. Of Americans annually arriving from the United States in the German Empire, I estimate the number at about 15,000, of whom about 13,000 return in the same season, leaving, perhaps, about 1,500 as sojourning or temporarily abiding in the country, and about 500 to be added to the class of those whose residence seems to be indefinite, thus doing a little more than making good the losses by death and otherwise in the resident class.

III. It is not possible to state the number of children born in Germany of fathers who claim to be American citizens. But as the class of resident Americans is composed mainly of persons advanced in life, or of families of whom the heads are advanced in life, the number of children born in Germany of American parents must be proportionally very much less than the number born among the same number of Germans.

IV. There is no record kept at the legation of children born of American parents in the German Empire. The only instances of a registry that have occurred in my time are those of children born in families of this legation. So far as I know, no such record is kept at any of the consulates. The Germans, however, are very particular in registering all births; but as these registers are kept by the clergy, so that a separate one is kept for each parish in the Empire, it would not be possible for the legation to ascertain how many have been registered as American citizens. In special cases the inquiry would be easy, for a claimant of American citizenship of this class might be called upon to produce an authenticated copy of his baptism.

I annex a translation in detail of the reports made to me from the census bureau of the Americans present in the German Empire on the first day of December, 1871, and copies of letters from the consulates at Hamburg and Bremen.

I remain, &c.

GEORGE BANCROFT.

View of the Americans counted as present on the 1st December, 1871, in the states of the German Empire, Prussia and the principalities of Pyrmont and Waldeck excepted.

States of the German Empire.	Male.	Female.	Total.
Lauenburg		1	1
Bavaria	757	689	1,446
Saxony	595	652	1,247
Württemberg	624	668	1,292
Baden	450	381	831
Hesse	292	241	533
Mecklenburg-Schwerin	27	16	43
Saxe-Weimar	56	35	91
Mecklenburg-Strelitz	11	7	18
Oldenburg	56	41	97
Brunswick	48	28	76
Saxe-Meiningen	27	17	44
Saxe-Altenburg	12	10	22
Saxe-Coburg Gotha	50	36	86
Anhalt	9	6	15
Schwarzburg-Rudolstadt	8	9	17
Schwarzburg-Sondershausen	10	8	18
Reuss, elder branch	1		1
Reuss, younger branch	5	5	10
Schaumburg-Lippe	1	1	2
Lippe	22	11	33
Lübeck	8	14	22
Bremen	246	233	479
Hamburg	333	235	568
Alsace and Lorraine	56	33	89
In the German Empire, exclusive of Prussia, Waldeck, and Pyrmont..	3,704	3,377	7,081
In the Kingdom of Prussia	2,016	1,567	3,583
In Waldeck and Pyrmont	6	2	8
Total	5,726	4,946	10,672

View of the Americans counted as present on the 1st December, 1871, in the Kingdom of Prussia and the principalities Waldeck and Pyrmont.

Districts and provinces.		Number of Americans.		
		Male.	Female.	Total.
1	District of Königsberg	7	1	8
2	District of Gumbinnen	1	1	2
3	District of Dantsic	4	5	9
4	District of Marienwerder	7	3	10
I	Province of Prussia	19	10	29
5	District of Berlin	346	187	533
6	District of Potsdam	21	13	34
7	District of Frankfort	16	4	20
II	Province of Brandenburg	383	204	587
8	District of Stettin	26	16	42
9	District of Coslin	9	6	15
10	District of Stralsund	3	3	6
III	Province of Pomerania	38	25	63
11	District of Posen	21	13	34
12	District of Bromberg	16	5	21
IV	Province of Posen	37	18	55

View of the Americans counted as present on the 1st December, 1871, in the Kingdom of Prussia and the principalities Waldeck and Pyrmont—Continued.

	Districts and provinces.	Number of Americans.		
		Male.	Female.	Total.
13	District of Breslau	26	22	48
14	District of Liegnitz	25	33	58
15	District of Oppeln	7	3	10
V	Province of Silesia	58	58	116
16	District of Magdeburg	12	10	22
17	District of Merseburg	17	14	31
18	District of Erfurt	13	12	25
VI	Province of Saxony	42	36	78
VII	Province of Schleswig-Holstein	92	56	148
19	District of Hanover	122	113	235
20	District of Hildesheim	75	53	128
21	District of Lüneburg	14	7	21
22	District of Stade	87	64	151
23	District of Osnabrück	41	21	62
24	District of Aurich	10	9	19
VIII	Province of Hanover	349	267	616
25	District of Munster	17	7	24
26	District of Minden	54	30	84
27	District of Arnsberg	17	13	30
IX	Province of Westphalia	88	50	138
28	District of Cassel	147	116	263
29	District of Wiesbaden	543	538	1,081
X	Province of Hesse-Nassau	690	654	1,344
30	District of Coblenz	44	36	80
31	District of Düsseldorf	99	62	161
32	District of Cologne	48	66	104
33	District of Treves	15	16	31
34	District of Aix-la-Chapelle	12	18	30
XI	Rhine Province	218	188	406
XII	Hohenzollern	2	1	3
	In the Kingdom of Prussia	2,016	1,567	3,583
	Principalities Waldeck and Pyrmont	6	2	8

Mr. Robinson to Mr. Bancroft.

HAMBURG, September 3, 1873.

DEAR SIR: I am in receipt of your favor of the 1st, and fear you will find it a difficult task to ascertain the number of German-Americans who annually resort to Germany.

The twenty-six regular Hamburg steamers which arrived here from July 1, 1872, to July 1, 1873, brought 9,594 passengers to Europe. Although one-fifth of these landed at Cherbourg or Plymouth, they were mostly bound for Southern Germany, so that I can safely assume that 9,000 of them came to Germany. By the extra steamers which came about 1,000 passengers were brought. This would make 10,000 persons, of whom, knowing what material they are generally composed of, I can say that 7,500 were German-American citizens, their wives, children, &c. How many of these came to remain it is impossible to state, but I should say certainly not more than 500 or 1,000, leaving 6,000 to 6,500 as temporary visitors during the year.

I am, &c.,

ED. ROBINSON,
United States Consul.

*Mr. Gruner to Mr. Bancroft.*BREMEN, *September 3, 1873.*

SIR: I have the honor to acknowledge the receipt of your communication dated September 1. In answer I beg to state that it is nearly an impossibility to ascertain the fact inquired for, there being no data to refer to. The passengers arriving here from the United States do not state their nationalities, but merely the State or city they came from, and the only criterion to go by is their name, which, of course, is only guess-work, as they may just as well be American-born as naturalized. Taking, therefore, into consideration that the passengers arrived here from the United States during the year 1872 amount to 3,910 first-class and 7,216 steerage, (the same proportion about in 1873 up to date,) it can be safely calculated that nearly from two-thirds to three-fourths of the former class, and at least five-sixths to seven-eighths of the latter, bear German names. From this statement, however, have to be deducted the commercial agents, who yearly make several trips to and fro; the quantity of those who remain in Germany permanently it is impossible to state, as all of them pass through this city for the interior. I judge, however, there are but few families, although it is said that lately more of the working-class of people have returned on account of the higher wages and cheaper living.

Trusting these explanations will meet your approbation,
I remain, &c.,

J. GRUNER,
Acting U. S. Consul.

No. 506.

Mr. Marsh to Mr. Fish.

No. 478.]

LEGATION OF THE UNITED STATES,

Rome, October 10, 1873. (Received November 3.)

SIR: Referring to your instruction No. 395, dated 11th of August, 1873, requiring information respecting the number of American citizens resident or temporarily sojourning in Italy, and to Mr. Wurts's dispatch on the same subject, No. 472, dated September 7, 1873, I regret to say that, though the legation has resorted to all the sources of inquiry readily accessible to us, we have failed to obtain as full and as exact details as we hoped and expected.

Returns have been received from all the consuls of the United States in Italy, except those at Genoa and Carrara, who have not yet replied to Mr. Wurts's circular; but on several of the points suggested the records of the consulates contain but scanty information, and, as will be seen from the note of the Italian minister of foreign affairs, dated September 27, a copy and translation of which, marked 1, are hereto annexed, nothing is at present to be gathered from the returns of the last census or from any of the public offices of this kingdom. Your *first* inquiry is as to the number of Americans whose residence in Italy has been of long continuance, or seems to be indefinite in its intended duration.

On this point the consulates report as follows:

At Ancona, the American residents are none.

At Brindisi, none.

At Florence, about 60, whose residence is upward of ten years, and of half of these the residence may be considered as indefinite in intended duration.

At Leghorn, two families, consisting of ten persons.

At Messina, native-born, 1; naturalized Sicilians, 18, with residence dating from various periods since 1844. Their families are apparently not embraced in the enumeration.

At Naples, 7, with their families, amounting in all to 16.

At Palermo, none.

At Rome, 110.

At Spezia, none.

At Venice, a family of 7, naturalized.

garded as above or below the annual average for a series of years.

II. Your *second* inquiry respects the number sojourning and temporarily abiding in the country, and asks whether such number is to be re-

The consuls report:

At Ancona, none.

At Brindisi, many Americans pass through the town, on their way to or from the East, but their stay does not exceed one week.

NOTE.—The steamers from Alexandria are weekly, and passengers often fail by a few hours to reach Brindisi in time, and are delayed until next trip.

At Florence, of *winter residents* about 200, the number having increased since the removal of the seat of government to Rome; of travelers spending one or two weeks in town, from October to June, an average per month of 300.

At Leghorn, in the summer, on the average about 20.

NOTE.—These I believe are chiefly persons residing in other Italian towns, and repairing to Leghorn for sea-bathing.

At Messina, none excepting passing travelers, who may remain two or three days only.

At Naples many temporary visitors, but number not stated. Residents of long duration, 21.

At Palermo, a family of three persons. Average annual number, about three or four families of twenty persons.

At Rome, students in American Catholic College, 30, and a few in the Propaganda. Number of temporary visitors not given, but supposed to be much smaller than formerly.

NOTE.—Upon personal inquiry of bankers and other well-informed persons, I learn that the probable average number of American travelers at Rome is from three to four thousand. It appears to have been somewhat greater for a year or two before the occupation of the city by the Italians, but the difference is not very sensible. The majority of American visitors to Rome remain from one to four weeks, and two or three hundred pass the whole season from November to April at the city.

At Spezia a few, number not stated, in summer.

NOTE.—These, with the exception of naval officers, are, I believe, chiefly persons residing in other Italian towns, and repairing to Spezia for sea-bathing, as at Leghorn.

At Venice 48, which is much below the ordinary average, on account of the prevalence of cholera.

III. The third query is as to the number of children born in Italy of fathers claiming to be American citizens.

At Anconia are reported none.

At Brindisi, none.

At Florence, annually about 2.

At Leghorn, none.

At Messina, since 1848, 20, all apparently of naturalized parents who have returned to reside in their native country.

At Naples, last two years registered 2; number not registered is not given.

At Palermo, none.

At Rome none registered, and no means of knowing actual number.

At Spezia, none.

At Venice in 1872, 1.

IV. The fourth inquiry refers to the number of Americans who may have been naturalized as Italians, or otherwise formally disavowed American citizenship.

No cases of this sort are reported by the consuls, but it is within my personal knowledge that in the year 1871, Guadagni Torelli, an Italian, naturalized as an American citizen and residing at Florence, formally renounced his American citizenship by a proceeding before a public judicature in conformity with the laws of Italy, and the consul at Messina reports a case of renunciation of American citizenship by a native of Messina whose naturalization was discovered to be fraudulent.

You inquire further whether any record or registration is made, or any notice filed, either at the legation or at the consulates of the United States in Italy, of the birth of children of fathers claiming to be American citizens.

It appears from the consular returns that at many of the consulates no records of the births of such children are kept. Since 1859 one such birth has been registered at the consulate in Florence; within the last twenty years four at that of Leghorn. A register is kept at Messina, and the number since 1848, as appears under III, is 20. None registered during the past year at Naples. At the consulate at Rome there is a book for the purpose of recording such births, but few parents cause the births of children to be registered. At Spezia births of children of naval officers are registered. At the consulate at Venice a book for that purpose is kept.

I have no means for ascertaining the number of Italians and other foreigners naturalized in the United States and now residing in Italy, but though it is doubtless considerably smaller than during and soon after the rebellion, I think it must still amount to several hundred. These persons very frequently make no claim to American nationality, unless in cases of conscription, and in these, I have reason to believe, they often succeed in obtaining from the local authorities an exemption without an appeal to the national government. In fact, except in the cases where they return to their own native residence, and are recognized by old acquaintances, they are not usually called upon to discharge civil or military obligations, and, as many of them have no visible property and no very stable residence, they escape taxation. I have known one case, and heard of others, of Italians who had never been in the United States, but had resided many years in Italy as American citizens upon no other evidence of nationality than passports issued to them by the United States consul at Rome on the surrender of that city to the French army in the invasion of 1849.

In many cases where I have been applied to by naturalized Italians for recognition as American citizens, I have found that an interval of several years elapsed between the first application to the courts and the granting of the certificate, the intermediate time having been spent in other countries or in a wandering life in the United States, and in these cases the certificate has been granted only on the eve of their departure for Europe. In most cases of applications for release from the obligation of military service, the applicant has either been discharged for physical disability, or, more commonly, has escaped across the frontier, and we have thus far avoided a direct collision with the Italian government on this question.

The regulation of the Department requiring the renewal of passports

every year is totally disregarded by both naturalized and native American citizens, and passports are almost never asked, except for travel.

I have often strongly suspected that passports presented to me had been fraudulently obtained, but the only cases within my knowledge where positive proof of such fraud existed are those of a native of Alexandria, Egypt, residing in Italy, which was, I have understood, a subject of correspondence between the State Department and the consulate-general at Florence, but never came before the legation officially, and a recent instance at Messina, which, I suppose, has been reported to the Department by the consul at that place.

I have, &c.,

GEORGE P. MARSH.

[Inclosure 1.—Translation.]

Mr. Peirolieri to Mr. Wurts.

ROME, September 27, 1873.

MR. CHARGÉ D'AFFAIRES: I regret to be unable to satisfy the request made in your note of the 8th instant.

The ministry of agriculture and commerce, from which I might have been able to obtain the statistics relating to the number of Americans born and residing in Italy, has replied to me that a work of this kind would require a long time and great labor, although not impossible to accomplish. In fact the lists of the census for each district make the distinction only between persons born in Italy and those born abroad. To determine the nationality of each individual it would, therefore, be necessary to examine each list of the families when the place of birth is indicated. It is, nevertheless, the intention of the bureau of statistics to study the results of the last census also from the point of view of the nationality of the foreigners residing in the kingdom. When this work is completed—a time, however, difficult still to appoint—the Government of the United States will be able to obtain all the statistics it wishes.

Accept, &c.,

A. PEIROLIERI,
For the Minister of Foreign Affairs.

No. 507.

Mr. Washburne to Mr. Fish.

No. 870.]

LEGATION OF THE UNITED STATES,
Paris, October 20, 1873. (Received November 7.)

SIR: Referring to your dispatch No. 522, of August 11, and to my No. 847 of August 30, in reply I have the honor to inclose you the advertisement of a proposed American Directory, got up by the "American Register" of this city. This work will give more complete information upon the subject of the number of Americans in France than any that I can obtain from other sources, and I shall forward you a copy so soon as it shall be published, with such remarks as it may seem to call for.

In the mean time I have taken steps, by consulting the prominent American bankers here and other well-informed persons, to inform myself as well as possible upon the subject in question. It results generally from the information I have thus obtained that the number of resident Americans in France does not increase, but, on the other hand, rather diminishes; that the number of traveling Americans passing

through France increases every year, and that there have probably been 20 per cent. more of this class here this year than ever before.

As regards the number of children born in France of American parents, I have reason to believe that they are in most instances registered at the consulates. I have applied to the consul-general for information on this point, as I have already stated, and he has promised to give it to me at the earliest possible date.

In reference to American citizens registered at the "mairie," with a view to their having the option of being French citizens, I have never heard of an instance of the kind. Children born here of American parents are almost universally registered at the "mairie," because the laws of the country require it, and because it is made the duty of the attendant physician to see that it is done. Such children, I have reason to believe, do sometimes, on coming of age, select (*opter*) to become French citizens, but I know of but one such instance, and I am sure that they are extremely rare.

In reference to your fourth inquiry, I doubt if any American citizen has formally disowned American citizenship; at least no such case has ever come to my knowledge; and the laws requiring military service in France are so onerous that I doubt if any one who is free from their operation voluntarily submits himself to them.

I shall have the honor to refer to this subject again when I shall have received a copy of the "American Directory" referred to.

I have the honor to be, sir, very respectfully, your obedient servant,
E. B. WASHBURNE.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Will be published shortly,

THE AMERICAN DIRECTORY

FOR PARIS AND EUROPE.

In addition to the names and addresses of all Americans permanently residing in Paris and the different cities in Europe, the above work will contain many valuable documents and much useful information upon all subjects of interest to Americans residing or traveling on the Continent. Americans residing in remote parts of Europe are kindly requested to send their names and addresses to the offices of the "American Register," 2 rue Scribe, Paris, or 4 Langham Place, London, for insertion in the above.

No. 508.

REPORT OF A COMMISSION APPOINTED BY THE QUEEN OF GREAT BRITAIN FOR INQUIRING INTO THE LAWS OF NATURALIZATION AND ALLEGIANCE, WITH A MEMORANDUM BY MR. ABBOTT, (LORD TENTERDEN,) THE SECRETARY OF THAT COMMISSION. ALSO EXTRACTS FROM AN APPENDIX ACCOMPANYING THAT REPORT, SHOWING THE CONDITION OF THE LAWS OF VARIOUS COUNTRIES ON THESE SUBJECTS, WITH ADDITIONS, CORRECTIONS, AND AMENDMENTS THERETO, MADE UNDER THE DIRECTIONS OF THE SECRETARY OF STATE, IN ORDER TO MAKE THEM CONFORM TO EXISTING LAWS.

[N. B.—By royal commission dated May 21, 1868, the Earl of Clarendon, Mr. Cardwell, Sir Robert J. Phillimore, Baron Bramwell, Sir John Karlake, Sir Travers Twiss, Sir Roundell Palmer, Mr. Forster, Mr. Vernon Har-

court, and Mr. Mountague Bernard were named commissioners to inquire into the legal condition of British subjects residing in foreign countries, and to report how and in what manner it might be expedient to alter and amend the laws of the realm relating to such subjects, their wives, children, descendants or relatives; also to inquire into and consider the legal condition of aliens residing within the realm and becoming naturalized, and to report how far it was expedient to alter or amend the laws relating to them or to persons claiming rights or privileges through them. Mr. Abbott (now Lord Tenterden) was the secretary of this commission. The commission made a report to the Queen on the 20th of February, 1869, with a voluminous appendix, a copy of all which was duly transmitted to the Department of State by the minister of the United States in London. The Secretary of State transmits herewith this report, with such extracts from the appendix thereto as appear to explain the laws of foreign countries on the subject of the report. Several changes are made in the matter contained in the appendix, in order to make it conform to what are understood to be existing laws. All such changes are noted. Some American correspondence is also added, which has taken place or been made public since the report was made.]

REPORT.

To the Queen's most excellent Majesty :

We, your Majesty's commissioners appointed to inquire into the laws of naturalization and allegiance, have to state that, in compliance with the terms of your Majesty's commission, we have inquired into the legal condition of natural-born British subjects who may depart from and reside beyond the realm in foreign countries, and have considered how and in what manner, having regard to the laws and practice of other states, it may be expedient to alter and amend the laws relating to such natural-born subjects, their wives, children, descendants, or relatives. We have also inquired into the legal condition of persons, being aliens, entering into or residing within the realm and becoming naturalized as subjects of the Crown, and have considered how far and in what manner it may be expedient, having regard to the laws and practice of this country, of foreign states, or otherwise, to alter or amend the laws relating to such persons, or persons claiming rights or privileges through or under them.

We have found it necessary, in order to deal satisfactorily with the matters referred to us, to enter into some others bearing closely on them but not embraced within the express terms of your Majesty's commission; and on these latter, as well as on the former, we have thought it right to submit to your Majesty the conclusions to which we have been led.

We now humbly lay before your Majesty the following report:

I.

There are two classes of persons who by our law are deemed to be natural-born British subjects:

1. Those who are such from the fact of their having been born within the dominion of the British Crown.
2. Those who, though born out of the dominion of the British Crown, are by various general acts of Parliament declared to be natural-born British subjects.

The allegiance of a natural-born British subject is regarded by the common law as indelible.

We are of opinion that this doctrine of the common law is neither reasonable nor convenient. It is at variance with those principles on which the rights and duties of a subject should be deemed to rest; it conflicts with that freedom of action which is now recognized as most conducive to the general good as well as to individual happiness and prosperity; and it is especially inconsistent with the practice of a state which allows to its subjects absolute freedom of emigration. It is inexpedient that British law should maintain in theory, or should by foreign nations be supposed to maintain in practice, any obligations which it cannot enforce and ought not to enforce if it could; and it is unfit that a country should remain subject to claims for protection on the part of persons who, so far as in them lies, have severed their connection with it.

We accordingly submit to your Majesty the following recommendations for an amendment of the law in this respect.

1. Any British subject who, being resident in a foreign country, shall be naturalized therein and shall undertake, according to its laws, the duty of allegiance to the foreign state as a subject or citizen thereof, should upon such naturalization cease to be a British subject.

2. The principle of this rule should be applied to a woman who, being a British subject, shall become by marriage with an alien the subject or citizen of a foreign state.

3. The wife of a British subject who shall become naturalized abroad, and his children, if under the age of 21 years at the date of his naturalization, should likewise cease to be British subjects from that date; but this rule should not include a wife or child who has not emigrated to the country of naturalization, nor should it operate unless, according to the local law, the naturalization of the husband or father has naturalized also the wife or child.

4. Naturalization in a foreign country, though operating from the time of its completion as an extinguishment of the original citizenship, should not carry with it discharge from responsibility for acts done before the new allegiance was acquired.

Provision should be made for applying the same principles to the case of British subjects who have become so by naturalization.

We have considered the question whether the acquisition of a foreign domicile, or a certain length of residence abroad, should divest a person of British nationality. We have not been able to satisfy ourselves that either continued residence or domicile could be practically adopted as a rule to determine the allegiance of the subject, having regard to the difficulties which attend the definition of domicile and proof of the fact, and also to the great diversity of circumstances under which men reside in foreign countries.

II.

It is expedient that the foregoing recommendations should be applied to British subjects already naturalized in foreign countries, as well as to those who may hereafter become so. A certain period, however, not less than two years, should be allowed, within which any person already so naturalized (that is, before the proposed alteration of the law is made) might declare his desire to remain a British subject. The mode in which this should be done might be settled reciprocally by treaty or otherwise with such foreign governments as are willing to permit it to operate as

an extinguishment of the acquired allegiance. In the absence of such an agreement, the naturalized person might make a formal declaration of such his desire, if resident abroad, before a British minister or consul, or, if within your Majesty's dominions, before a justice of the peace, such declaration to be registered or recorded in such manner as might be judged expedient, in the United Kingdom by the secretary of state for the home department, in a colony by the governor or other chief officer of the government. Any person thus electing within the prescribed period to remain a British subject should be deemed to retain his British nationality, and the benefit of this election should extend to his wife, and to his children if under age at the time; but the election should not (unless permitted by the state of his naturalization to extinguish his acquired allegiance) entitle him or them to claim any British privileges when within the territories of that state.

These provisions should be deemed to apply to women already naturalized abroad by marriage with an alien or by the foreign naturalization of their husbands, and to children already naturalized abroad by the foreign naturalization of their fathers. Such women, becoming or having become widows, and such children, attaining or having attained the age of 21 years, should be enabled to retain their British nationality by exercising a like option at any time before the expiration of the period to be limited as aforesaid.

Persons already naturalized abroad who might not exercise this option within the prescribed period would be able at any time afterwards to regain British nationality in the mode pointed out in a subsequent part of this report.

III.

The above recommendations, if carried into effect, would impose the condition of aliens upon many persons who have hitherto enjoyed the legal rights proper to British subjects. It was necessary, therefore, to consider what effect the deprivation of such rights would have upon those affected by the change. And here it was impossible to overlook the serious question raised by the existence of those disabilities which (subject to certain limitations) attach by law to aliens in respect to the holding and inheritance of real estate in the United Kingdom.

Those disabilities have hitherto only affected persons who had never been regarded by the law as natural-born British subjects, such persons alone coming within the legal definition of aliens. But when it is proposed to bring within the same category a new class of persons who, having been originally British subjects, are for the future to lose that character, different considerations arise. To deprive persons already naturalized abroad, who now enjoy the right of holding and inheriting lands, of that right, might be thought harsh if not unjust. In the case of those who may become so naturalized hereafter, the same objection would not arise; but even here the penalty of exclusion from possible rights of inheritance appears to be an impolitic restriction on the liberty of emigration.

We have to choose, then, between two courses: one is to maintain the existing disabilities, making special provision for the new class of cases to which our recommendations would give rise; the other, to abrogate the disabilities altogether in respect of all classes of aliens.

The first course, viz, that of making special provision for expatriated British subjects who will now become aliens, while it would break in upon the general principle, might, in practice, be productive of embar-

rassment and litigation. We have accordingly considered the other course. The question whether aliens ought any longer to be prohibited by our law from holding landed property within the realm has not, indeed, been expressly referred to us by the terms of Your Majesty's commission; but we have found it impossible to deal with the position of those who, under the terms of our previous recommendations, will cease to be British subjects, without forming an opinion as to the position of aliens generally in this respect.

We think it right to point out that not only can aliens hold real estate in France and many other European countries, but they are also enabled by colonial enactments to hold real estate in the Dominion of Canada, (except New Brunswick,) British Columbia, Cape of Good Hope, Natal, Queensland, Victoria, South Australia, St. Kitts, and Hong-Kong, while the regulations prohibiting aliens from possessing real estate have recently been repealed in Bengal, and are now under revision in Madras and Bombay.

By the act of 1844, (7 and 8 Vict., c. 66,) "every alien now residing in, or who shall hereafter come to reside in, any part of the United Kingdom, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation, or otherwise, take and hold any lands, houses, or other tenements, for the purpose of residence or of occupation by him or her, or his or her servants, or for the purpose of any business, trade, or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, and privileges, except the right to vote at elections for members of Parliament, as if he were a natural-born subject of the United Kingdom."

This term of twenty-one years may, of course, be renewed.

We have arrived at the conclusion that the grounds formerly assigned for the rule are either untenable in themselves or have ceased to be applicable; and we are prepared, therefore, instead of making any distinction between the two classes of aliens, to recommend that the present disabilities of alienage in respect of the holding and inheritance of land should be abolished altogether.

It has been suggested that, in time of war, danger might occasionally arise from the possession of land by aliens. We think it sufficient to say that this is a danger against which, should it be deemed serious enough to demand special legislation, it would not be difficult to guard

IV.

In considering whether the character of a natural-born British subject should be regarded as indelible, and, if not, how it should be lost, we have found it necessary to consider also whether any changes should be made in the laws which determine what classes of persons should be deemed to possess that character.

There are two classes with respect to whom this question may be raised. They are—

1. Persons of foreign parentage born within the dominions of the Crown;

2. Persons of British parentage born abroad.

All persons, of whatever parentage, born within the dominions and allegiance of the Crown, are, by the common law, natural-born British subjects. All persons, on the other hand, of whatever parentage, born beyond its dominions and out of its allegiance, were, by the common law, regarded as aliens.

By various statutes it has been enacted as follows:

25 Edw. 3, stat. 2: "All children inheritors which henceforth shall be born out of the ligeance of the king, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefit and advantage, to have and bear inheritance within the same ligeance as the other inheritors aforesaid, in time to come; so always that the mothers of such children passed the sea by the license and will of their husbands."

7 Anne, c. 5: "The children of all natural-born subjects born out of the ligeance of Her Majesty, her heirs and successors, shall be deemed, adjudged, and taken to be natural-born subjects of this kingdom, to all intents, constructions, and purposes whatsoever."

4 Geo. 2, c. 21: "And whereas some doubts have arisen upon the construction of the said recited clause in the said act of the seventh year of her late Majesty's reign, now, for the explaining the said recited clause in the said act, relating to children of natural-born subjects, and to prevent any disputes touching the true intent and meaning thereof, be it enacted that all children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain, at the time of the birth of such children respectively, shall and may be adjudged and taken to be natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever."

13 Geo. 3, cap. 21: "All persons born, or who hereafter shall be born, out of the ligeance of the Crown of England or of Great Britain, whose fathers were or shall be, by virtue of a statute made in the fourth year of King George the Second, to explain a clause in an act made in the seventh year of the reign of Her Majesty Queen Anne, for naturalizing foreign Protestants, which relates to the natural-born subjects of the Crown of England or of Great Britain, entitled to all the rights and privileges of natural-born subjects of the Crown of England or of Great Britain, shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this kingdom."

Without entering into any discussion on the construction of these statutes, we think it right to state that, so far as we are aware, no attempt has ever been made on the part of the British government (unless in eastern countries where special jurisdiction is conceded by treaty) to enforce claims upon, or to assert rights in respect of, persons born abroad as against the country of their birth while they were resident therein, and when by its laws they were invested with its nationality.

A rule corresponding to that of the English common law has been retained by the United States. Every person born within the limits and jurisdiction of the United States is an American citizen by American law. But it is also provided by an act of Congress passed in 1855, that "Persons heretofore born, or hereafter to be born, out of the limits of the jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however,* That the rights of citizenship shall not descend to persons whose fathers never resided in the United States."

By the Code Napoléon, (art. 10,) "Tout Français né d'un Français en pays étranger est Français." As to children born in France, they were under the code French if their fathers were French, aliens if their fa-

thers were aliens, but with a right in the latter case to claim French citizenship on making a declaration and fixing their domicile in France. An exception has been introduced, however, by a law passed in 1851, by which, if the alien father were also born in France, the child is deemed French, but is at liberty to claim the status of an alien on attaining twenty-one years of age.

The Prussian law of 1842 declares that "every legitimate child of a Prussian subject is, by birth, a Prussian subject, even though born in a foreign country."

Of these two tests of nationality—the place of birth and the nationality of the father—neither is at present adopted without qualification by British, French, or American law. The laws of these countries exhibit, in fact, different combinations of the two, Great Britain and the United States laying chief stress on the place of birth, while in France the father's nationality determines, though not absolutely and in all cases, that of the child; and this latter theory has found acceptance among other European nations.

The rule which impresses on persons born within your Majesty's dominions the character of British subjects is open to some theoretical and some practical objections, of the force of which we are aware. But it has, on the other hand, solid advantages. It selects as the test a fact readily provable; and this, in questions of nationality and allegiance, is a point of material consequence. It prevents troublesome questions in cases (numerous in some parts of the British Empire) where the father's nationality is uncertain; and it has the effect of obliterating speedily and effectually disabilities of race, the existence of which within any community is generally an evil, though to some extent a necessary evil. Lastly, we believe that of the children of foreign parents, born within the dominions of the Crown, a large majority would, if they were called upon to choose, elect British nationality. The balance of convenience, therefore, is in favor of treating them as British subjects unless they disclaim that character, rather than of treating them as aliens unless they claim it. The former course is, of the two, the less likely to inflict needless trouble and disappoint natural expectations.

We do not therefore recommend the abandonment of this rule of the common law, but we are clearly of opinion that it ought not to be, as it now is, absolute and unbending. In the case of children of foreign parentage, it should operate only where a foreign nationality has not been chosen. Where such a choice has been made it should give way.

As to the second class—persons of British parentage born abroad—we think it expedient that the statutes now in force should be repealed, in order to introduce some limitations and place the law on a clearer and more satisfactory basis. Birth abroad is often merely accidental, while of those British subjects who go to reside in foreign countries a great number certainly prize British nationality for themselves, and wish that it should be enjoyed by their children. The law, as it stands, concedes this benefit to their children born abroad, and we do not recommend that it should be withdrawn; but we think that the transmission of British nationality in families settled abroad should be limited to the first generation.

The following recommendations embody the conclusions we have formed on this branch of the subject:

As to persons born within the dominions of the Crown:

(a.) All persons born within the dominions of the Crown should be regarded by British law as British subjects by birth, except children born of alien fathers and registered as aliens.

(b.) Provision should be made for enabling children, born within the dominions of the Crown, of alien fathers, to be registered as aliens; and children so registered should be thenceforth regarded as aliens. The child, if not so registered on his birth or during his minority by his father or guardian, should be permitted to register himself as an alien at any time before he has exercised or claimed any right or privilege as a British subject.

(c.) If the father, being an alien when the child was born, becomes during the child's minority naturalized as a British subject, the child, though registered as an alien, should follow the condition of the father.

2. As to persons born out of the dominions of the Crown:

(a.) Every child born out of the dominions of the Crown, whose father at the time of the birth was a British subject, should be regarded by British law as by birth a British subject, provided the father was born within the dominions of the Crown, but not otherwise.

(b.) Provided, that any such person as aforesaid who, according to the law of a foreign country, is a subject or citizen of that country, and who has never exercised or claimed any right or privilege as a British subject, should, in the administration of British criminal law, be treated as a subject of the country in which he was born.

(c.) And if any such person, charged with a criminal offense for which an alien would not be liable to be tried, should successfully defend himself on the ground that he was not, in respect of the act alleged, amenable as a British subject to the criminal law of this country, he should be thenceforth, to all intents and purposes, an alien.

(d.) If, before the child's birth, the father had become naturalized in the foreign country, he would, under our previous recommendations, have ceased to be a British subject. If he should become so naturalized during the child's minority, the child born abroad should follow the condition of the father.

(e.) By the statute 12 and 13 Vict., c. 68, provision is now made for the registration at British consulates abroad of marriages of British subjects celebrated abroad; and official copies of such registers are made evidence in the courts of this country. We think that a similar system of registry, with the like legal effect, should be adopted for the purpose of procuring evidence (as far as practicable) of births and deaths of British subjects abroad, due provision being made for securing the accuracy of such registration; and we further recommend that such registries should be established in all British legations as well as consulates.

The above recommendations, in so far as they may be inconsistent with the present law or practice of this country, are not intended to apply to children born of British fathers within the dominions of the Ottoman Porte, China, Japan, or other countries with which Great Britain may have special treaties for exclusive jurisdiction, nor any part of Asia or Africa not the possession of some civilized state. As to such children we contemplate no alteration in the existing law.

V.

We have considered the present practice of naturalization under the act 7 and 8 Vict., c. 66. In dealing with this question we have desired to give effect to our opinion, that to be a British subject is a valuable privilege, to be considerably imparted to those who desire its advantages and are willing to undertake its duties. If aliens are, as we recommend, made capable of holding real estate, the considerations applicable

to the question will be simplified; the inducement which now most commonly leads foreigners to apply for naturalization will be removed; the rights conferred by it will be political rights; and we think, on the one hand, that these rights should in no case be granted without the security which previous residence affords, and, on the other, that when granted they should be full and complete. We recommend, therefore, that the act should be amended so as to make a certain length of residence in the United Kingdom, or of service under the British Crown, to be proved to the satisfaction of the secretary of state, a necessary condition of obtaining the privilege of naturalization; that, subject to this condition, the privilege should continue to be granted at the discretion of the secretary of state; and that a person so naturalized should be thereupon entitled to all the rights and privileges of a natural-born British subject within the United Kingdom.

This alteration of the law, if made, will be incompatible with the continuance of the practice of issuing certificates of naturalization revocable or determinable if the naturalized person resides abroad for six months without the permission of the secretary of state, a practice which, in other respects, appears to us to be open to serious objections.

VI.

We have previously stated our opinion that British-born subjects, who have already been naturalized in foreign countries, should be allowed a period of not less than two years within which to resume their original nationality.

We further recommend that provision should be made to enable British-born subjects, who may at any time have lost their British nationality, to be re-admitted to the privileges of British subjects by a system similar to that by which aliens are naturalized in this country, and on the same condition of a previous term of residence. Such persons should only be re-admitted to British nationality at the discretion of one of Her Majesty's principal secretaries of state, on addressing a memorial to the secretary of state setting forth the grounds on which they seek re-admission, and their intention thenceforth to reside and settle within the British dominions. The secretary of state might then, if he saw fit, and on being satisfied that the prescribed conditions were complied with, grant certificates re-admitting the applicants to the rights and capacities of natural-born British subjects, on their taking an oath of allegiance; but such certificates should not entitle the holders to British privileges within the country of their foreign naturalization, should they return thereto, unless according to its law they had ceased to be subjects or citizens of that country.

The wives, or children under 21 years of age, of persons so re-admitted to British nationality, should also, if resident within the British dominions, be considered and taken to be British subjects from the date of that re-admission, subject to the above reservation.

The same rule as to re-admission should apply to women of British birth whose British nationality had been lost by marriage with an alien, on their becoming widows; but the children of such women, born of an alien father, should not by the re-admission of the mother become naturalized as British subjects.

The foregoing provision will apply to the case of persons who shall desire to be re-admitted within the United Kingdom to the privileges of British subjects.

It seems also desirable to make provision for the case of persons who, having lost their British character, may desire to be re-admitted within the colonial dominions of the Crown to the advantages of British nationality.

In the case of an alien-born, naturalization in the United Kingdom under the act of 1844 does not confer any rights of nationality within the colonies, (10 and 11 Vict., c. 83.) On the other hand, colonial naturalization confers no rights of nationality beyond the limits of the colony granting naturalization.

The case of persons, however, who have lost their British nationality by force of such enactments as those which we recommend, will stand upon a different footing. When they are re-admitted to British nationality within the United Kingdom they will also recover it in the colonies, since no colonial law has deprived them of their nationality.

We think it advisable that the governors or chief officers in the colonies should have a similar power to re-admit such persons to British nationality upon the same conditions as to residence and otherwise as those prescribed for re-admission in the United Kingdom. Persons so re-admitted will thereupon revert to their former rights, as in the case of re-admission within the United Kingdom.

VII.

In the foregoing recommendations we have endeavored to diminish the number of cases in which one who by British law is a British subject is regarded by foreign law as a foreign subject or citizen, and to obviate, as far as possible, the difficulties and inconveniences arising from such a double allegiance. But this, we are aware, cannot be done, otherwise than imperfectly, by British legislation alone; it requires the co-operation of foreign governments and legislatures.

If Great Britain renounces the doctrine of indelible allegiance, and acknowledges that British subjects can divest themselves of their nationality by foreign naturalization, it may be hoped that the same principles will be recognized by other countries with respect to aliens naturalized within the British dominions; and we accordingly recommend that efforts should be made to procure that reciprocity, as well as to secure to the children of British subjects born abroad, the same power of choosing their nationality which it is proposed to confer on the children born of alien parents within British territory.

This might be effected by agreements or conventions concluded with different states separately; or better, perhaps, by means of a general understanding arrived at, in conference or otherwise, by the powers most interested in the subject.

VIII.

Among other matters which have been brought under our notice, we have had occasion to remark the unsatisfactory results of the operation of the law enabling aliens to claim a jury *de medietate linguæ*.

The mixed jury was instituted by Edward III as an encouragement to foreign woolen merchants to resort to the English market, (27 Edw. III, stat. 2, c. 3, and 28 Edw. III, c. 13.)

The clauses of the statutes enacting it were confirmed by the act 8, Hen. VI, c. 29, and by the last act for consolidating and amending the laws relating to jurors and juries, (6 Geo. IV, c. 50.)

It is settled law that those members of a mixed jury who are foreigners need not be of the same nationality as the alien; they need not even speak the same language, but may each of them belong to a different nation and speak a different tongue.

We see no advantage in the maintenance of such a system, while the inconveniences which may arise from it are obvious; and we accordingly recommend that the statutes authorizing trials by mixed juries should be repealed.

We have not thought it necessary, in making these recommendations, to enter into any general review of the subjects referred to us; as a full account of British and foreign laws, and of the diplomatic correspondence which has passed between Your Majesty's government, the Government of the United States, and other governments is contained in the memorandum by our secretary, Mr. Abbott, and other papers annexed to our report.

CLARENDON.	[L. S.]
EDWARD CARDWELL.	[L. S.]
ROBERT PHILLIMORE.	[L. S.]
W. E. FORSTER.	[L. S.]
*G. BRAMWELL.	[L. S.]
TRAVERS TWISS.	[L. S.]
J. B. KARSLAKE.	[L. S.]
ROUNDELL PALMER.	[L. S.]
†W. VERNON HARCOURT.	[L. S.]
*M. BERNARD.	[L. S.]

CHARLES S. A. ABBOTT, *Secretary*.

February 20, 1869.

*We concur, except on one point, with the recommendations of the report. As that point is important, we think it right to express our dissent, and to state, very briefly, the reasons on which it is founded.

The report recommends, (Section IV, recommendations 1, *a b*,) that the child born within the dominions of the British Crown of an alien father should be regarded by British law as a British subject. This is the subsisting rule of the common law. A majority of the commissioners think that it should be retained, but that provisions should be engrafted on it, which would enable such persons, during minority or at any time afterward, to assume, by simple registration, the condition of aliens. We think otherwise, for the following reasons: Such a law tends to produce, and must produce, in many cases, that double allegiance which we all hold it desirable, as far as possible, to extinguish. (Report, Section VII.) It is inconsistent in principle with the recommendation that the child born abroad of a British father should be regarded by British law as a British subject. It is at variance with the law and practice of other European states. It agrees, indeed, with those of the United States of America; but this very agreement, if examined, will be found to be such as to make a conflict of claims between the two countries more probable. None of the duties of a British subject could practically be enforced against a person who, though born here, had always resided in the foreign country to which his father belonged. He could not, if he happened to be here, be justly made amenable to any duties other than such as the law imposes on all comorant foreigners; but he would, nevertheless, possess the rights of a subject, without having any real title to them. He might renounce, indeed, if he pleased, his British allegiance. But why should he renounce that which might be a benefit to him and could not be a bur-

den? If, on the other hand, he were regarded as an alien by birth, he could (provided he were resident here) obtain the advantages of nationality by undertaking its obligations.

We do not dispute that the common-law rule, which impresses British nationality at the moment of birth on all persons born on British soil, has arguments of some weight in its favor, nor that the substitution of a different rule would be attended by some inconveniences. But these inconveniences, which would rapidly diminish as the new rule became known and understood, do not, in our judgment, constitute a sufficient reason why, in deliberately revising our law on a matter which concerns foreigners as well as Englishmen, we should forego the great advantage of legislating on a consistent and generally accepted principle, and that principle one which is intrinsically reasonable and sound.

The qualification that, where the father, though an alien, was born here, the child, likewise born here, should be deemed a British subject, appears to us to limit conveniently the application of the principle without substantially breaking in upon it. An analogous provision has been adopted in French law.

GEORGE W. W. BRAMWELL.
MOUNTAGUE BERNARD.

† Concurring, as I do, in the fundamental recommendation of the report contained in its first section, I have thought it right to sign the report.

I feel compelled, however, after the best consideration I have been able to give to the subject, to dissent from the scheme contained in Section IV of the report for determining the nationality of children of foreign parents born within the realm.

Most persons will probably agree that the true rule for determining nationality, if it were practicable, would be found in the principle of domicile, *i. e.*, that the home of a man's choice should also be the country of his allegiance; and, indeed, the report asserts the soundness of this principle. The difficulty, however, of ascertaining the true domicile of a person resident in a foreign country, in the legal acceptation of that term, is a bar to its adoption in a case where it is requisite that the rule should be simple and obvious. Of all questions of law those which concern domicile are the most complicated and obscure, because they ultimately depend upon intention, which is necessarily of all things the most difficult to determine. We are driven, therefore, to adopt some less accurate but more practical rule, which shall approximate to though it may not reach the same result.

In the case of persons born within British territory, of British parents, the presumption of British nationality and British domicile is, of course, conclusive. In the case of persons of British origin who have formally accepted a foreign naturalization, the presumption of change of domicile, and, therefore, of nationality, is sufficiently evidenced by the overt act of naturalization; and to such a condition of things the provisions of Section I of the report apply themselves. Here the nationality follows distinctly the domicile which is clearly ascertained.

But there exist further two classes of cases with which Section IV of the report deals, viz, (1) that of the children born of British parents abroad, and (2) that of children of foreigners born in the dominions of the Crown. In these cases the real domicile may be said to be indeterminate, or at least ambiguous; for the British subject resident abroad or the foreigner resident in England may, in either case, desire to adhere to the domicile of his origin.

Hitherto, as is well known, by the common law of England, inherited rather than adopted by the United States, the nationality of such children has been determined solely by the locality of their birth. The inconveniences of this principle, where rigorously applied, have been universally recognized. The statute law of England and America has made provision to remedy its operation in the case of the children of their own subjects born abroad. Indeed, the rule is wholly indefensible in principle. By the law of all modern nations the condition of the child primarily depends on that of the father. But the doctrine of deriving nationality from the locality of birth makes it depend on the accidental situation of the mother; and by this rule a child may become a subject of a country in which his father not only never made his home but which he never even entered.

The rule of determining nationality by locality of birth was of purely feudal origin, and accordingly in the legislation of modern Europe since the French Revolution it has been discarded as the governing principle among continental nations. The Code Napoléon has adopted another principle, viz, that the nationality of the child should follow the nationality of the father, in the absence of any proof of an election on the part of the child to adopt the nationality of the country of his birth. This doctrine seems sound in principle. In the absence of naturalization by the father in the country of the birth of the child, there is no ostensible evidence of the desire of the father to change his domicile or his country. The nationality of the child ought not, therefore, to be altered while that of the father remains unchanged, except by some deliberate act of the child. That this principle is also convenient in its operation is proved by the fact that almost all continental states have in practice adopted the doctrine of the Code Napoléon; and, as has been mentioned above, it has been incorporated into the statute law of England and America in the case of their own subjects born abroad. That the commissioners do not dissent from this rule is shown by the fact that in Section IV (§ 2) as to persons born of British fathers out of the dominions of the Crown, they recommend that the nationality of the child shall, in the first instance, be determined by that of the father.

But in the same section, (Section IV, § 1,) in the case of children of foreign parents born within the realm, the report proposes that the old rule of the locality of birth should *prima facie* prevail.

From this latter recommendation I dissent, and that for several reasons:

(1.) If it is desirable to recast the doctrine of nationality by such extensive changes as those proposed in the report, it seems expedient to found the whole system on some intelligible and self-consistent principle. It would be difficult to suggest any reason for adopting the rule by which the nationality of the father determines that of the child in the case of the children born of British fathers abroad, which does not equally apply to the case of the children born of foreign fathers in England; and to lay down an opposite rule in the two cases seems not only indefensible in principle, but to be a course which, in respect of policy, is very likely to be misunderstood by foreign governments. If, while we assert that the child born of an Englishman abroad is a British subject, we also claim that the child born of a foreigner in England is likewise a British subject, it will be thought that acting for our own advantage on inconsistent principles we are grasping at the combined chances of a double event.

(2.) It seems very desirable, as is stated in Section VII of the report, to lay down some rule in which all or most states are likely to agree.

Now, the rule of determining the nationality of the child *prima facie* by that of the father is adopted by all states as regards the children born of their own subjects abroad. As regards the children of foreigners born in the realm, it is adopted by all states except England and America. It is obvious, therefore, that this is the rule by the adoption of which will be most readily obtained that consent of nations which on such a subject is of capital importance. It is stated in Section VII of the report that "we have endeavored to diminish the number of cases in which one who by British law is a British subject is regarded by foreign law as a foreign subject, and to obviate as far as possible the difficulties and inconveniences arising from a double allegiance." In that object I entirely concur; but it seems to me that it is not accomplished but rather defeated by laying down the rule that the child born of a foreigner in England is *prima facie* a British subject. In the view of every state (including the United States, so far as regards the children of born Americans in England) such person is a subject of the state of his father's origin; and therefore the proposed rule necessarily creates all the difficulties and inconveniences of a double allegiance. Assume, on the other hand, the rule adopted by the report in the case of the children born of British parents abroad, to be applied consistently to the case of the children born of foreign parents in England, it will be seen that the desired object will be completely accomplished. If the child B, of a foreigner A, is born in England, he would then be regarded by the English law as a foreigner; and so he would be regarded by all the world; and thus there would be no conflict of allegiance. Suppose A, the father, to become naturalized in England, then B, the child, would be by English law a British subject, and cease to be the subject of the country of his father's origin—and so he would be regarded by all the world—assuming the United States to adopt (as we have reason to believe they would adopt) the principle laid down in Section I of the report, viz, that foreign naturalization extinguishes the native allegiance. The same thing would occur if B were himself naturalized. And thus, by the adoption of a simple and consistent rule, we should lay the foundation of a general harmony in the doctrine and practice of nations which is not only of theoretical value but of great practical consequence; for nothing would more solidly conduce to the peace of the world than that the same allegiance should be predicated of the same person by all governments.

(3.) I am by no means insensible of the practical conveniences which may result in some cases from the adoption of the rule of the locality of birth, which are set forth in Section IV of the report, but there appear to be grave disadvantages attendant on the rule which more than counteract them. Such a rule, as has been shown above, will have the effect of imposing the quality of British subjects on a number of persons who neither seek nor desire it. It is true that the report makes provision in the case of such persons for a machinery by which they may divest themselves of that character. Upon this it may be observed that a foreigner *in transitu* may, through ignorance or carelessness, omit to take measures which shall have the intended effect. But it is not necessary to urge this point, because in fact it would be as impossible in the future as it has proved in the past, to insist against the will of the individual on his British character thus imposed by the mere accident of birth. The real evil to this country is of an exactly opposite character, viz, that by this rule persons are clothed with the character of British subjects, and become entitled to all its benefits, who have no real connection with the community, and who ought to have no claims upon it.

It is not probable that any foreigner accidentally resident in this country would disclaim the citizenship for his child which the law would confer, for the simple reason that the child would be enabled to take all the benefits but could in no case be really made to fulfill the obligations of a British subject. Under this rule the child of a foreigner born here might return to his own country in his infancy, and he would thereafter possess whenever he chose to claim them, not only for himself, but (since he is a natural-born British subject) for his children also, all the benefits of the character of a British subject, while it is abundantly clear that neither he nor his children could ever be called upon to perform any of its duties. This is the practical mischief of the present rule, and to reenact it would be to give fresh authority to a principle the inconvenience of which is sufficiently apparent. Nothing can be more politically inexpedient than that this country should be exposed to the claims of a class of persons who have no interest in its welfare, and who, neither by origin, nor domicile, have any community with its affairs.

On the other hand, in the case of foreigners and their children who really desire to incorporate themselves and their interests in the common stock of this country, and to embark their fortunes with ours, there seems neither hardship nor inconvenience in requiring that they should evidence their intention to change their nationality and adopt a new domicile by some formal act which, while it would establish their British nationality, would at the same time terminate their foreign allegiance. They would then no longer be able to blow hot and cold, and adopt in turn such nationality as happened for the moment to suit their interests. If the alien father is domiciled in England, and intends to cast in his lot and that of his family with this country, why should he object to naturalize himself or his child? But if he is unwilling by such an act to sever his connection or that of his family with the country of his origin, why should we embarrass our relations with foreign states by conferring our nationality on such a person—to his advantage, it may be, but certainly not in any respect to our own?

If the father and the child are really domiciled in this country, the process of naturalization would be simple and easy, and having regard to the recommendation in Section V of the report it will be seen that a person so naturalized will enjoy all the advantages which belong to a natural-born subject; if they are not so domiciled I venture to think the child ought not to acquire the privilege of British nationality by the simple accident of birth. The great importance of insisting on naturalization in such cases is, that it is by this means alone that the double allegiance can be avoided. For this purpose it is essential that the act which confers the nationality should in itself openly and unambiguously terminate the old allegiance. This the rule which requires naturalization of a foreigner born in England as a condition of British nationality would do; while the rule conferring nationality by the mere fact of birth would give the new nationality without dissolving the old allegiance.

I should therefore propose that in the case of the children of foreigners born within the realm, the following rule should be adopted:

“Children born within the realm of alien fathers who have been themselves born abroad shall be deemed aliens. But such children shall become British subjects (1) upon the naturalization of their fathers, or (2) upon their being themselves naturalized either by their fathers during their minority or by themselves at full age.”

This rule would make the child born in this country, of an alien father also born in this country, a British subject by birth, and in this respect

it accords with the French law. Though apparently somewhat in conflict with the general principle, it is in fact in strict conformity with the principle which makes domicile the governing rule of nationality; for though the presumption of domicile is very small from the mere fact of the place of birth of a single individual in one generation, it becomes very strong when the birth both of the father and the child takes place in the same country. Such a condition of things may be safely taken as a sufficient proof of permanent change of domicile and of the election of a new nationality, which could not be inferred from a solitary and isolated instance.

There is another point affecting the latter part of Section IV of the report, on which I feel great difficulty. Though I concur in the principle laid down in Section IV (§ 2 a) of the report, by which it is declared that the children born of British fathers abroad "should be regarded by British law as British subjects," I greatly doubt the expediency of the declaration in the same section (§ 2 b) that "in the administration of British criminal law" such children are under certain conditions not to be treated as British subjects. The word "subject," in my understanding of the term, involves of necessity subjection to the laws of the state of which such person is a subject, and above all subjection to its criminal law. If it is necessary (though I think that is more than doubtful) to create a class of persons who shall be capable of all the privileges while they are liable to none of the obligations of citizens, it would be desirable to discover for such a class some more appropriate title than that of "subjects." What is no doubt intended is that such persons should have the capacity of becoming at their election British subjects, and that till they have exercised the option to enjoy the benefits, they shall not be called upon to bear the burdens of that character, but that after they have claimed the advantages they shall not be able to decline the obligations of subjects. But surely if this be the view which it is intended to present, it should be distinctly asserted that while the person is not amenable to the law of England he is not yet a British subject, and that as soon as he becomes a British subject he is at once amenable to that law. I cannot, therefore, assent to a definition which speaks of a person as "regarded by British law as by birth a British subject," (Section IV, § 2 a) and of the same person, at the same time, under certain conditions, as a person "who in the administration of British criminal law should be treated as a subject of the country in which he was born," (Section IV, § 2 b.) The question of whether a particular individual who is thus declared a British subject is or is not amenable to our criminal law is made to turn upon the point of whether he has or not "ever exercised or claimed any right or privilege as a British subject." I confess that in terms so general and vague there seems to me to lurk a dangerous ambiguity very intractable in the administration of criminal law. What are these "rights and privileges;" what is to be the extent of the "exercise" or the nature of the "claim" which by their absence or their presence are to sustain or to defeat the jurisdiction of the Crown over persons who are nominally British subjects? This distinction seems to constitute the same person a British subject by birth in the view of the English civil law, and to leave him an alien in the eye of the English criminal law. There may be persons against whom it is inexpedient that the rights of the Crown should be actually enforced in particular cases. But this is a very different thing from a formal declaration that there exist persons legally called "British subjects" who are not justiciable in the courts of the Queen.

W. VERNON HARCOURT.

APPENDIX NO. I.—NATURALIZATION AND ALLEGIANCE.

Observations to accompany memorandum on naturalization and allegiance

The practical question at the present time is, whether Great Britain shall adopt the principle of expatriation, advocated by the Government of the United States and incorporated in the recent treaty between that country and Prussia?

In order fully to understand the position occupied by the United States and Great Britain on this matter, it is necessary to consider the principles on which naturalization and expatriation are carried out by different countries.

There are five main systems of naturalization:

1. By taking an oath of allegiance and obtaining a certificate, granted at the discretion of the government, as in England.
2. By certificate from a court of law, granted on proving residence for a stated period and taking oath of allegiance, as in Canada.
3. By residence for a stated period, and certificate from the government, without oath, as in France.
4. By employment in the public service, or certificate from the government, as in Prussia.
5. By residence for a stated period, renunciation of native allegiance, and by taking an oath of allegiance to adopted country, as in the United States.

Provision is also made by many countries for the exceptional naturalization of aliens, as in England, by two years' naval service during war, and in the United States by service in the army with one year's residence.

There are three distinct doctrines of expatriation:

1. The continental, as embodied in the Code Napoléon, by which an emigrant incurs the loss of civil rights in his native country, ("privation des droits civils par la perte de la qualité de Français;" "perdita della cittadinanza.") Should the emigrant return to his native country, this loss of civil rights may be accompanied by penal consequences, as in Austria, when the emigration has taken place without the permission of the government.

Looking to the circumstances under which the Code Napoléon was framed, and to the continental practice of conscription, it is obvious that expatriation, as provided for in that code, and in the laws subsequently founded on it, was intended to punish, and not to encourage, emigration.

2. The American, or theoretical. The American doctrine has varied from Mr. Wheaton's axiom, when minister to Berlin in 1840, that native nationality reverted on return to the native land, to Mr. Cass's in 1858, that, should a naturalized foreigner "return to his native country, he returns as an American citizen, and in no other character."

While American politicians argue that "perpetual allegiance is a doctrine of barbarism," no provision is made in the statutes of that country for the expatriation of Americans. This anomaly has been frequently pointed out, and was remarked upon in the recent debates in the House of Representatives, when one of the speakers urged that, before asking other countries to alter their laws, the United States should set the example by altering their own.

3. The English. Originating in the feudal idea of native and indelible allegiance to the prince of the country in which the subject was born, the English doctrine has been gradually modernized into a system of native nationality adapted to a commercial people.

It is in this latter spirit, with a view to retaining the connection between British subjects residing for mercantile purposes in foreign countries and their native land, that the statutes declaring the sons and grandsons of British subjects born abroad to be British subjects must now be regarded.

There are, therefore, two conflicting principles of expatriation; the continental, which punishes emigration by loss of civil rights, but does not necessarily admit that such emigration can free the emigrant from the obligations of his native nationality; and the American doctrine, which claims for the subjects of other countries (but does not grant by law to Americans) the right of free expatriation.

That this right is denied by most continental countries is shown by the fact that a Frenchman, whose certificate of foreign naturalization is not of three years' date, is liable to the French conscription; a Russian, naturalized abroad, may be expelled from Russia; even a Prussian, under the new treaty with the United States, must reside uninterruptedly in America for five years, as well as be naturalized, before he can change his nationality. Each country hampers expatriation with such restrictions as it thinks fit, and this must probably continue to be the case so long as the present conscription laws are retained.

There does not seem any evident reason why such restrictions should be imposed by Great Britain if the principle of expatriation were adopted.

In the Prince Regent's declaration of 1813, the necessity for maintaining the doctrine of indissoluble allegiance is based upon the right of the Crown to the services of its subjects, specially seamen, in time of war.

A similar argument was urged by Lord Stowell and at the negotiations for the treaty of Ghent.

In fact, in those days, Great Britain stood toward the United States, as regards maritime conscription, much in the same position as the continental countries now stand with regard to their military conscription.

But the practice of impressment has now fallen into desuetude and is not likely ever to be revived.

The further claim to punish as traitors British subjects found in arms against their native country, was practically abandoned when the prisoners taken in the United States service were unconditionally exchanged in 1814, without having been brought to trial as threatened.

It must be remembered that the theory of treason is the same in England and in the United States. The law of France punishes with death a Frenchman (whether naturalized abroad or not) who is taken in arms against France.

The right of impressment having been given up, and the doctrine of treason thus modified by practice, there does not now remain any claim which Great Britain need seek to maintain upon the allegiance of British subjects emigrating to foreign countries.

Moreover, the interest of the British colonies in urging the right of free expatriation is only second to that of the United States. Indeed, any privileges or rights which may be accorded to Germans, or others, becoming naturalized in the United States, and which may not be secured equally for emigrants to the colonies, more especially Canada, would offer a direct premium on emigration to the former, to the manifest disadvantage, and probably discontent, of the latter.

The importance of this view of the subject will be seen from the following statistics, taken from the census of 1861 :

UPPER CANADA.

Total population	1, 396, 091
Born in the United States.....	50, 758
Born in Prussia, German States, and Holland	22, 906

LOWER CANADA.

Total population	1, 110, 664
Born in the United States.....	13, 641
Born in Germany, &c.....	949

NEW SOUTH WALES.

Total population	350, 860
Born in Germany.....	5, 467

QUEENSLAND.

Total population, (exclusive of aborigines).....	30, 059
Born in Germany.....	2, 124

VICTORIA.

Total population	540, 322
Born in Germany.....	10, 418

SOUTH AUSTRALIA.

Total population	126, 830
Born in Germany.....	8, 863

It is stated that Germany affords 7 per cent. of the immigrants to this colony.

* * * * *

It is to be presumed that if treaties could be agreed upon which would be practicable in operation and acceptable to foreign nations, a corresponding alteration in the law, at all events of this country, would have to be made ; and it must be a matter of consideration how such an alteration can be carried out, affecting, as it will do, the rights of property in the colonies as well as in England, and altering the whole system on which the hitherto received doctrine of British protection to British subjects resident abroad rests.

While it seems perfectly fair to expatriate a person who willfully severs his connection with his native country, care should be taken to make a distinction between persons residing temporarily abroad for commercial purposes, and compelled by local laws to take an oath of allegiance in order to carry on their trade or profession, as was formerly the case in Russia and Denmark, and persons permanently incorporating themselves and their interests in a foreign country.

Thus it would be a hardship on British merchants that a person who had taken out a burgher license to enable him to carry on a broker's agency in Denmark, should be thereby absolutely expatriated and disabled from inheriting real property in England.

Nor should a British subject be expatriated for having worn a red waistcoat at Buenos Ayres, (see Memorandum,) or resided two years in Colombia.

The merchant shipping act of 1854 provides that no person who has taken an oath of allegiance to a foreign sovereign shall be entitled to be registered as owner of a British merchant-vessel unless he shall have subsequently taken another oath of allegiance to the British Crown.

The principle of expatriation here recognized could not be carried out without some further provisions, as it will have been already seen that an oath of allegiance is not required for naturalization in France and other countries.

The simplest plan would be to provide that a British subject naturalizing himself in a foreign country should be deemed, from the time of his being so naturalized, to be a subject or citizen of that country. The advantage of making the act of expatriation depend upon the act of naturalization would be that a record of the fact would be preserved; whereas if the expatriation is made to depend also upon domicile (as in the Prussian treaty) the difficulties of subsequently proving such uninterrupted domicile would probably be almost insuperable.

The Prussian treaty likewise contains a provision for repatriation by domicile. In Prussia this may be of importance, as it would no doubt be inconvenient to allow naturalized Prussian-Americans to return to Prussia and to claim continued exemption from the military service to which all their neighbors would be exposed.

The new Italian code enables an expatriated citizen to recover his civil rights: 1. By returning to the realm with the special permission of the government. 2. By relinquishing foreign employment. 3. By declaring before the proper civil authority of the State an intention to re-establish his domicile within the realms, and by so *bona fide* establishing it within a year. The son of an expatriated Italian can also recover his nationality by making a similar declaration on coming of age, either before the authorities in Italy, or before any Italian diplomatic or consular agent abroad.

Having regard to the British law of alienship, particularly as respects the right to inherit real property, there might be great difficulty in making similar provisions for the repatriation of British expatriates, especially as there is no machinery in England or the colonies for local registration for police and conscription purposes as in Italy, Prussia, and France.

A careful consideration, therefore, of this intricate subject leads to the following conclusions:

1. That the time has arrived when the principle of free expatriation may be adopted, and even (in the interests of the colonies) advocated by Great Britain.

2. That such expatriation should depend on the expatriate being naturalized by some legal process in a foreign country, and not on domicile; care being taken that the interests of persons resident abroad and assuming local and temporary allegiance for mercantile purposes are not injuriously affected.

3. That an expatriate should become from the time of his alien naturalization absolutely an alien, subject both as regards himself and his children (whether minors at the time of his naturalization or born subsequent to it) to all the disabilities of alienship.

4. That repatriation should be effected in the same manner as naturalization, *i. e.*, the expatriate having become an alien should only recover the rights and privileges of a British subject by the same process as aliens are admitted to them.

(Signed)

CHAS. S. A. ABBOTT.

FOREIGN OFFICE, *March 19, 1868.*

PART I.—BRITISH AND COLONIAL LAWS.

[Since this report was made a new statute has been enacted by the imperial Parliament. This matter is substituted for the matter respecting imperial legislation contained in the report.]

AN ACT to amend the law relating to the legal condition of aliens and British subjects. [12th May, 1870.]

Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as "The Naturalization Act, 1870."

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description

may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: *Provided*, (1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise: (2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him: (3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this act, or in pursuance of any devolution by law on the death of any person dying before the passing of this act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their *status* as such subjects, it shall be lawful for Her Majesty, by order in council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such order in council, any person, being originally a subject or citizen of the state referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid.

A declaration of alienage may be made as follows; that is to say,—If the declarant be in the United Kingdom, in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became, under the law of any foreign state, a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

5. From and after the passing of this act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

EXPATRIATION.

6. Any British subject who has at any time before, or may at any time after the passing of this act, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien; *Provided*, (1.) That where any British subject has, before the passing of this act, voluntarily become naturalized in a foreign state, and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this act, make a declaration that he is desirous of remaining a British subject, and upon such declaration, herein-after referred to as a declaration of British nationality, being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect: (2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say,—if the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

7. An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's principal secretaries of state, either by general order or on any special occasion, has resided in the United

Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's principal secretaries of state for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such secretary of state may require. The said secretary of state, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said secretary of state may, in manner aforesaid, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this act may apply to the secretary of state for a certificate of naturalization under this act, and it shall be lawful for the said secretary of state to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. A natural-born British subject who has become an alien in pursuance of this act, and is in this act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's principal secretaries of state for a certificate herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said secretary of state shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject, he shall not be deemed to be a British subject, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this act conferred on the secretary of state in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. The oath in this act referred to as the oath of allegiance shall be in the form following; that is to say,

"I, ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs, and successors, according to law. So help me God."

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

10. The following enactments shall be made with respect to the national status of women and children: (1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject: (2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this act: (3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this act, every child of such father or mother who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject: (4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British na-

tionality, every child of such father or mother who, during infancy, has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents: (5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who, during infancy, has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

SUPPLEMENTAL PROVISIONS.

11. One of Her Majesty's principal secretaries of state may, by regulation, provide for the following matters: (1.) The form and registration of declarations of British nationality: (2.) The form and registration of certificates of naturalization in the United Kingdom: (3.) The form and registration of certificates of re-admission to British nationality: (4.) The form and registration of declarations of alienage: (5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations: (6.) The transmission to the United Kingdom for the purpose of registration or safe-keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this act: (7.) With the consent of the treasury the imposition and application of fees in respect of any registration authorized to be made by this act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this act.

The said secretary of state, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said secretary of state in pursuance of this section shall be deemed to be within the powers conferred by this act, and shall be of the same force as if it had been enacted in this act, but shall not, so far as respects the imposition of fees, be in force in any British possession, and shall not so far as respects any other matter be in force in any British possession in which any act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this act: (1.) Any declaration authorized to be made under this act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned: (2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate: (3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate: (4.) Entries in any register authorized to be made in pursuance of this act shall be proved by such copies, and certified in such manner as may be directed by one of Her Majesty's principal secretaries of state, and the copies of such entries shall be evidence of any matters by this act or by any regulation of the said secretary of state authorized to be inserted in the register: (5.) The documentary-evidence act, 1868, shall apply to any regulation made by a secretary of state, in pursuance of, or for the purpose of carrying into effect any of the provisions of this act.

MISCELLANEOUS.

13. Nothing in this act contained shall affect the grant of letters of denization by Her Majesty.

14. Nothing in this act contained shall qualify an alien to be the owner of a British ship.

15. Where any British subject has in pursuance of this act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to

be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

17. In this act, if not inconsistent with the context or subject-matter thereof:—"disability" shall mean the status of being an infant, lunatic, idiot, or married woman: "British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this act: "The governor of any British possession" shall include any person exercising the chief authority in such possession: "Officer in the diplomatic service of Her Majesty:" shall mean any ambassador, minister, or chargé d'affaires, or secretary of legation, or any person appointed by such ambassador, minister, chargé d'affaires, or secretary of legation to execute any duties imposed by this act on an officer in the diplomatic service of Her Majesty. "Officer in the consular service of Her Majesty" shall mean and include consul-general, consul, vice-consul, and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, and consular agent.

REPEAL OF ACTS MENTIONED IN SCHEDULE.

18. The several acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; *Provided*, That the repeal enacted in this act shall not affect—(1.) Any right acquired or thing done before the passing of this act: (2.) Any liability accruing before the passing of this act: (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offense committed before the passing of this act: (4.) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous acts.

This schedule, so far as respects acts prior to the reign of George the Second, other than acts of the Irish Parliament, refers to the edition prepared under the direction of the record commission, intituled "The Statutes of the Realm; printed by command of His Majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts."

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy. (7 Jas. 1, c. 2.)

An act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens. (11 Will. 3, c. 6.¹)

An act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America. (13 Geo. 2, c. 7.)

An act to extend the provisions of an act made in the thirteenth year of his present Majesty's reign, intituled "An act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath." (20 Geo. 2, c. 44.)

An act to explain two acts of Parliament: one of the thirteenth year of the reign of his late Majesty, "for naturalizing such foreign Protestants and others as are settled or shall settle in any of His Majesty's colonies in America;" and the other of the second year of the reign of his present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's royal American regiment, or as engineers in America." (13 Geo. 3, c. 25.)

An act to prevent certain inconveniences that may happen by bills of naturalization. (14 Geo. 3, c. 84.)

An act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens. (16 Geo. 3, c. 52.)

¹ 11 and 12 Wm.3. (Ruff.)

An act to alter and amend an act passed in the seventh year of the reign of His Majesty King James the First, entitled "An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy." (6 Geo. 4, c. 67.)

An act to amend the laws relating to aliens. (7 and 8 Vict., c. 66.)

An act for the naturalization of aliens. (10 and 11 Vict., c. 83.)

PART II.

ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED.

An act for encouraging Protestant strangers and others to inhabit and plant in the kingdom of Ireland. (14 and 15 Chas. 2, c. 13.)

An act for naturalizing of all Protestant strangers in this kingdom. (2 Anne, c. 14.)

An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom. (19 and 20 Geo. 3, c. 29.)

An act for extending the provisions of an act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom." (23 and 24 Geo. 3, c. 38.)

An act to explain and amend an act intituled "An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others who shall settle in this kingdom." (36 Geo. 3, c. 48.)

PART III.

ACTS PARTIALLY REPEALED.

An act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary. (4 Geo. 1, c. 9; act of Irish Parliament.) Extent of repeal: So far as it makes perpetual the act of 2 Anne, c. 14.

An act for consolidating and amending the laws relative to jurors and juries. (6 Geo. 4, c. 50.) Extent of repeal: The whole of sec. 47.

An act consolidating and amending the laws relating to jurors and juries in Ireland. (3 and 4 Will. 4, c. 91.) Extent of repeal: The whole of sec. 37.

COLONIAL NATURALIZATION.

Doubts having arisen whether the Act 7 and 8 Vict. c. 66, of 1844, extended to the colonies, an act was passed in 1847 (10 and 11 Vict., c. 83) declaring that it did not extend to the colonies, and that all laws, statutes, or ordinances duly passed or to be passed within Her Majesty's colonies or possessions abroad conferring the privileges of naturalization within the limits of such colonies were valid, subject to the usual confirmation by the Crown.

It may be interesting to notice the naturalization acts at present in force in the principal colonies.

ANTIGUA, GRENADA, ST. VINCENT.¹

In Antigua, (Act No. 739, October, 1861,) Grenada, (Act No. 230, 1858,) and St. Vincent, (Act of October, 1857, sect. 17,) alien immigrants of African descent, arriving from the United States, or from the British North American colonies, who may have entered or may enter into a written contract of service for not less than a year, shall after three years' residence enjoy all the privileges of a natural-born subject upon taking the oath of allegiance before the governor, in the presence of the secretary to the government. This officer is to keep a register of the names, &c., of such naturalized immigrants, and the register, or an official extract is, upon proof of the identity of the immigrant, to be evidence of his rights.

BAHAMAS.¹

By the colonial act, No. 11 Vict., cap. 4, passed 22d March, 1848, aliens become naturalized upon taking the oath of allegiance and obtaining a certificate from the governor in council under the great seal of the colony that the oath has been taken. The cer-

¹ Colonization Circular, No. 27, 1868, published by the Emigration Commissioners.

tificate is obtainable on presentation to the governor in council of a memorial setting forth full particulars respecting the memorialist and the grounds on which the privileges of naturalization are sought, and when obtained the certificate must be recorded in the office of the public secretary and registrar of records. The fees are to be regulated by the governor in council and to be paid into the public treasury.

BARBADOS, ST. VINCENT, ST. LUCIA, GRENADA.¹

In Barbados, St. Vincent, St. Lucia, Grenada, and generally in the minor West Indian colonies, there is no general naturalization law, but special acts are required on each occasion.

BERMUDA.¹

In this colony the rights of aliens and the steps to be taken for obtaining naturalization are prescribed by a colonial act, No. 11 of 1857. They are similar in their main features to those in force in New South Wales.

The time, however, within which the oath is to be taken is extended to three calendar months from the date of the certificate of naturalization. The oath is to be taken before the governor, and a memorandum of the fact indorsed on the certificate, which document is to be registered in the colonial secretary's office, and then enrolled in the court of the chancery.

BRITISH COLUMBIA.¹

In this colony the privileges of aliens are at present regulated by a proclamation, dated 14th May, 1859, and issued by the governor, under the authority of the imperial act, 21 and 22 Vict., cap. 99, and of his commission. By this² proclamation aliens have the same capacity to hold and transmit landed and real estate of every description as natural-born British subjects, and after a residence of three years may demand naturalization on producing a declaration of residence and character from some British subject, on making himself a declaration of residence, and on taking the oath of allegiance. The latter declaration must be made and oath taken before a justice of the peace, who is to declare that he knows no reason why the applicant should not be naturalized. These conditions being fulfilled, the court of British Columbia is to record the proceedings, and the alien is then to be deemed a British subject for all purposes whatsoever while within the colony. The cost of this process is 18s. Aliens, wives of British subjects, are to be deemed to be naturalized.

The naturalization may be annulled (in addition to the penalties for perjury) if any party to either of the above declarations is convicted of perjury therein.

BRITISH GUIANA.

In this colony there is no general act for naturalization. A special ordinance is therefore passed on each occasion, authorizing the governor to issue letters-patent, granting to the alien the rights and capacities of naturalization.

The letters-patent must be recorded in the registrar's office of the counties of Demerara and Essequibo, and within ten days from their date the alien must take and subscribe the oath of allegiance before a judge of the supreme court, and a certificate thereof is issued by the registrar of the court, whose certificate is to be received as sufficient evidence of the fact.

These ordinances are reserved for Her Majesty's pleasure, and do not take effect until the same has been notified in the official gazette of the colony.

CANADA.

Naturalization act, 22 Vict., c. 8, 1859:

Section 1. "Every alien residing in any part of this province before or since 18th January, 1849, with intent to settle therein, and who, after a continued residence of three years or upwards, has taken the oaths or affirmations of residence and allegiance, shall thenceforth enjoy and transmit all the rights and capacities which a natural-born subject of Her Majesty can enjoy and transmit."

OATH OF RESIDENCE.

Section 2. "I, A. B., do swear that I have resided three years in this province with intent to settle therein, without having been, during that time, a stated resident in any foreign country. So help me God."

The oath of allegiance is the same as in the English act of 1844.

¹ Colonization Circular, No. 27, 1868, published by the Emigration Commissioners. ² Parliamentary papers on British Columbia, Part 3, 1860.

These oaths are to be taken before the justices of the peace at quarter sessions, or before the recorder, and a certificate is to be at the same time produced, signed, if practicable, by a magistrate, testifying to the truth of the statement as to residence.

Thereupon the clerk of the court is to issue a certificate, stating that "under and by virtue of the said act, the said A. B. hath obtained all the rights and capacities of a natural born British subject within this province."

Section 7. Any woman married to a natural-born British subject, or person naturalized under the authority of this act, to be deemed naturalized, and have all the rights and privileges of a British subject.¹

Section 10. The rights to be enjoyed under this act to be subject to the conditions and limited to the province, as provided by the act of the Imperial Parliament.

There are no disabling clauses.

CAPE OF GOOD HOPE.²

By a proclamation issued on the 2d day of May, 1817, by the then governor-general, Lord Charles Henry Somerset, deeds of burghership, subject to the approbation of the Crown, can be granted to all foreigners and aliens of good character and conduct applying for the same, provided they shall have resided for the last five successive years within the settlement, and upon their taking the usual oaths of allegiance, and paying the usual fees for the deed of burghership in addition to a stamp of 18*l.* 15*s.*

By an act, No. 8, of 1856, all former laws, customs, or usages inconsistent with the act are repealed, and from its promulgation (4th June, 1856,) aliens may purchase, acquire, and own fixed property in the colony, in like manner as natural-born subjects. But beyond this nothing in the act is to be taken as naturalizing any aliens or bestowing upon them any of the privileges conferred by deeds of burghership.

By an act, No. 37, of 1861, the governor is empowered to grant letters of naturalization to any alien of full age and good character, and able to read and understand some European language, and to write his name, provided he has been resident in the colony five years, or is married to a natural-born British subject, or possesses unencumbered landed property in the colony of not less value than 300*l.*

This act also provides that naturalization elsewhere within British dominion shall hold good at the Cape.

The fee for these letters of naturalization is fixed at 20*l.*

HONDURAS.³

The naturalization act for this colony, 18 Vict., cap. 18, was proclaimed 19th July, 1855. It is similar to the New South Wales act. By the 23d section immigration act, 24 Vict., cap. 5, passed in 1861, every immigrant born out of the British dominions who shall have obtained or become entitled to a certificate of industrial residence, shall immediately thereafter become entitled to all such privileges as are conferred by the act 18 Vict., cap. 18, on naturalized aliens, except the capability to become a member of assembly, which privilege, however, may be allowed by the superintendent.

HONG-KONG.³

By the colonial ordinance, No. 2, of 1853, passed on the 17th November of that year aliens, though not naturalized, may acquire and dispose of real estate within the colony as effectually as natural-born subjects. The ordinance confers no other rights on aliens.

JAMAICA.³

The governor may by instrument under the broad seal make any alien or foreigner coming to settle and plant in the island, having first taken the oath of allegiance, to be completely naturalized, and the persons named to enjoy the same immunities and rights to the laws of this island as natural-born subjects.

The statute 13 Geo. II, c. 7, naturalizing foreign Protestants and others settling in the colonies, to be in full force and operation.

The alien disabled from being a member of the council or assembly.

The provisions, &c., as to the rights of aliens, enacted by the English act of 1844, made applicable to Jamaica by 14 Vict., c. 40., 1851.

By another act, 22 Vict., cap. 1. (Nov., 1858,) every "immigrant" born out of the British dominions, who may obtain or become entitled to a "certificate of industrial

¹ This clause, which is the same as the 16th section of the English act, is repeated in all the colonial acts. ² Colonization Circular, 1868. ³ Digest of laws of Jamaica, by the attorney-general of Jamaica, Ed. 1865, p. 5.

residence" under the act, thereby becomes entitled to all the privileges of a natural-born subject within the island. An immigrant is defined to be any person introduced at the public expense from certain specified places.

NATAL.¹

Under the law No. 1, of 1860, the lieutenant-governor is authorized and empowered to grant, under the public seal of the colony, letters of naturalization to any alien who shall have attained the full age of 21 years, and who shall be able to read and understand one or more of the languages of Europe, and to write his name, and shall have presented to the said governor a memorial praying to be naturalized; and every such alien, prior to obtaining such letters of naturalization, shall pay into the treasury of the colony a sum of five pounds sterling.

No alien shall (except as in the next succeeding section is excepted) be capable of receiving letters of naturalization unless he shall have been a resident within the colony during the five years immediately preceding the presentation of his memorial praying to be naturalized.

Any alien who shall be married to a natural-born subject of Her Majesty the Queen, or who, being married to an alien, shall have had by his said wife, during their marriage and residence within the colony, not less than three children, and any alien who shall be the owner of landed property within the colony, and registered in his name, of not less a value than 300*l.*, over and above all special conventional mortgages affecting the same, shall be capable of obtaining letters of naturalization, although he shall not have resided in the colony for five years.

No letters of naturalization shall be granted to any alien who is an uncertificated insolvent, or of unsound mind, or has been convicted and sentenced for treason, murder, rape, theft, fraud, perjury, forgery, or any other infamous crime.

When such letters of naturalization shall have been obtained by any alien he shall be bound to take the oath of allegiance to Her Majesty the Queen.

Any alien woman already married or who shall be hereafter married to a natural-born subject or person naturalized under this or any other law, shall be deemed and taken to be herself naturalized. All minor children, alien born, of any alien parent, who shall himself or herself be naturalized under this or any other law, and which children shall be within the colony at the time of the naturalization of their parent, shall be themselves naturalized *ipso facto* by such naturalization.

NEW BRUNSWICK.¹

The colonial act, 24 Vict., c. 24, April 1861, required one year's residence and an oath of allegiance. By the Dominion Consolidation² act, however, (cap. 66, 1868,) the process of naturalization in New Brunswick has been assimilated to that previously in force in Canada. (See Canada.)

NEWFOUNDLAND.

By a colonial act, 19 Vict., cap. 20, passed on the 12th May, 1856, the governor may, by letters-patent under the great seal of the colony, naturalize any alien resident therein.

Within ten days thereafter the alien must take and subscribe in duplicate, before a judge of the supreme court, the oath of allegiance, one copy of which is to be filed in the registry of the court, and the other in the office of the government secretary. The alien is then entitled to all the privileges and subject to all the liabilities of a natural-born subject.

The judge shall, if required, certify on the letters of naturalization that the oath has been taken, which certificate shall be evidence of its contents.

NEW SOUTH WALES.³

(11 Vict., No. 39, 1848.)

The same as the English act of 1844, *mutatis mutandis*.

The governor to grant the certificates.

Section 4 disables from being a member of the executive or legislative councils.

The rights and capacities conferred by the certificate limited to "within the said colony."

¹ Colonization Circular, 1868. ² Dominion act c. 66, 1868. ³ Callaghan's Statutes of New South Wales, vol. ii, p. 1830.

Naturalized aliens who shall have resided in the colony for three years, being otherwise qualified, are entitled to vote at elections, and, after five years' residence, to be elected members of the assembly.

NEW ZEALAND.¹

The colonial act (30 Vict. No. 17, 1866) is the same as the English act, *mutatis mutandis*, with the following additional provisions:

Persons resident in the colony who have been naturalized in the United Kingdom, or in any British colony on the continents of Australia, (including Tasmania,) Africa, or America, may, if the governor thinks fit, be naturalized in New Zealand on exhibiting the certificate of naturalization and stating in their memorials that such certificate has been obtained without fraud or intentional false statement, and that the signature and seal, if any, thereto are genuine.

The colonial secretary is to enroll all letters of naturalization and a certified copy of every such certificate, and shall be entitled to a fee of 1*l.* from every person to whom the letters are granted, and shall cause indices to be made to such letters and certificates, which shall be open for inspection or copying on payment of a fee of 1*s.* for each inspection.

The penalty for false statements in the memorial is the avoidance of the letters of naturalization (except against *bona-fide* purchasers for valuable consideration) in addition to the penalties of perjury. All pre-existing rights are saved, whether of aliens or natural-born subjects.

NOVA SCOTIA.²

After one year's residence, and on taking the oath of allegiance, the alien was entitled to all the rights and privileges of a British subject within the province, under the colonial act of 1858, (Title 8, c. 43.)

By the Dominion act, however, (c. 66, 1868,) the Canadian naturalization law was extended to Nova Scotia. (See Canada.)

PRINCE EDWARD ISLAND.³

(Naturalization law, April 17, 1862.)

After seven years' residence, and on taking the following oath, the alien is entitled to "all the privileges of a natural-born subject of Her Majesty:"

OATH.

"I, A. B., of ———, do swear that I have resided seven years in this island, without having during that time been a stated resident in any foreign country, and that I will be faithful and bear true allegiance to the sovereign of Great Britain and Ireland, and of this island as dependent thereon. So help me God."

It is somewhat remarkable that the period of seven years required by the act of Geo. 2, and which the Americans complained against as excessive in the Declaration of Independence, should be purposely retained to this day in Prince Edward Island.

QUEENSLAND.⁴

A colonial act passed in 1867 contains the same clauses as the English act with regard to the possession of leasehold property by aliens and the rights of aliens descended from British mothers, with the following additional provisions:

1. Any alien, native of a friendly European or North American state, can become naturalized on taking an oath of allegiance.

2. No Asiatic or African alien to be naturalized unless he has resided in the colonies for three years, and is married, and his wife resident in the colonies at the time of his naturalization.

Asiatic and African aliens only to be naturalized on obtaining a certificate from the governor, subject to such reservations as he may think fit to insert in such certificate.

Such aliens disqualified from being members of the executive or legislative council, or legislative assembly.

¹ Colonization Circular, 1868. ² Revised Statutes of Nova Scotia, 2nd series, p. 153. ³ Laws of Prince Edward Island, vol. ii. p. 567. ⁴ Queensland Act, 31 Vict., December 28, 1867.

OATH OF ALLEGIANCE.

"I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria as lawful sovereign of the United Kingdom of Great Britain and Ireland and of the colony of Queensland, dependent and belonging to the said United Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against her person, crown, and dignity; and that I will do my utmost endeavor to make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them. So help me God."

The fees under this act are remarkably small, viz: oath, 1s.; filing record, 1s.; certificate, 2s. 6d.; so that any white alien can be naturalized for 4s. 6d.

ST. KITTS AND ANGUILLA.¹

By a local act, No. 127, passed on the 3d February, 1857, all domiciled or resident liberated Africans are to be deemed to be natural-born subjects, and capable of holding and conveying real and personal estate. The children, wherever born, of a mother a natural-born subject are made capable of taking real or personal estate by purchase or descent; and wives of natural-born or naturalized subjects are to be deemed to be naturalized.

Aliens, subjects of a friendly state, may acquire and hold either real or personal estate as effectually as natural-born subjects, but they are not thereby made capable of becoming members of the council or of the assembly, nor of voting at the election of members of the assembly.

SIERRA LEONE.¹

By the imperial act, 16 and 17 Vict., cap. 86, (20 Aug., 1853,) liberated Africans domiciled or resident in Sierra Leone are to be deemed within the colony to be natural-born subjects as from the date of their arrival, and to be capable of holding and transmitting any estate, real or personal, within the colony. Power is given to the local legislature to alter or repeal any of the provisions of the act so far as they relate to the right to real property. Liberated Africans are also to be considered as British subjects for the purposes of treaties with native chiefs.

SOUTH AUSTRALIA.¹

By the colonial amending and consolidating act, No. 5, of 1864, every person born of a mother who is a natural-born or naturalized subject is capable of holding real or personal estate.

Friendly aliens may hold every description of property whether real or personal.

A certificate of naturalization may be applied for by any alien, and upon receipt of such application, countersigned by a justice of the peace, the governor, if he think fit, shall direct the applicant to take the oath of allegiance before one of the judges of the superior court, and, on such oath being taken, he shall issue letters of naturalization. The fee for obtaining the certificate in duplicate is 1l. 1s.

The effect of this certificate is to vest all the rights and privileges of a natural-born British subject in such naturalized alien.

A subsequent act, 23 and 24 Vict., No. 20, provides that aliens who obtain certificates of naturalization in any British colony or possession may obtain the privileges of naturalization in South Australia on lodging with the registrar-general of the colony their original certificates of naturalization together with a true copy thereof. The original is then returned with an indorsement that the alien had made the declaration and taken the oath of allegiance prescribed by the act.

The fee for this process is fixed at 10s. 6d.

TASMANIA.¹

By a colonial act, 25 Vict., No. 2, passed in November, 1861, repealing 5 Will. 4, No. 4, the governor in council is empowered, on the presentation of a memorial, stating particulars, to issue a certificate granting all the rights and capacities of a natural-born British subject within the colony, such certificate to be enrolled in the supreme court, and an oath of allegiance to be taken before a judge or commissioner of the supreme

¹Colonization Circular, 1868.

court, (within 60 days from the date of the certificate,) who will grant a certificate of the taking and subscribing the oath. The cost of the whole process is 6s.

TRINIDAD.¹

In this island a special ordinance of naturalization is required on each occasion, to obtain which the alien must present a petition to the governor. When the ordinance has been passed, and the alien has taken the oath of allegiance before the governor, he becomes entitled, within the limits of the colony, to all the privileges of a natural-born subject.

The taking of the oath is to be immediately certified by the governor, and the certificate is to be recorded in the registrar-general's office.

These ordinances are reserved for Her Majesty's pleasure, and do not take effect until it has been signified.

TURK'S ISLAND AND CAICOS ISLAND.¹

By the colonial act, No. 1, Vict., c. 4, passed 22d March, 1848, aliens become naturalized upon taking the oath of allegiance and obtaining a certificate from the president in council, under the great seal of the colony, that the oath has been taken. The certificate is obtainable on presentation to the president of a memorial setting forth the grounds on which the privileges of naturalization are sought, and when obtained it must be recorded in the office of the public secretary and registrar of records. The fees are to be regulated by the president in council.

By ordinance No. 8, of 1857, (passed 17th October, 1857, and confirmed 13th February, 1858,) aliens may hold lands, salt ponds, &c., (except salt ponds at Turk's Island,) on lease not exceeding 21 years, which lease may be renewed at the end of the term.

VICTORIA.¹

The colonial act, 28 Vict., No. 256, which came into operation on the 1st of June, 1865, and is called "The Alien's Statute, 1865," repeals the previous acts, 24 Vict., No. 112, and 26 Vict., No. 166. It provides that alien friends resident in the colony may inherit, acquire, hold, and dispose of every description of property, whether real or personal, in the same manner as natural-born subjects of the Crown; and all dispositions made before the passing of this act to or by such aliens are declared to be valid. The governor may, if he thinks fit, grant under the seal of the colony letters of naturalization to resident alien friends, provided they be of good repute and take the oath of allegiance to the British Crown. But they are rendered incapable of being members of the legislative council and the legislative assembly.

To obtain naturalization, the alien is to present a memorial to the governor, signed by himself, and verified on oath, stating his name, age, birthplace, occupation, length of his residence in the colony, and his desire to settle therein. The memorial must be accompanied by a certificate, signed by a warden, police magistrate, or justice of the peace, that the applicant is known to him, and is a person of good repute.

If the application be favorably entertained, the alien must take the oath of allegiance before a judge of the supreme court, or of a county court, or court of mines, or police magistrate, and, on production of a certificate from the judge or magistrate to that effect, the governor in council issues the letters of naturalization; they, and a certified copy of the certificate, are then to be recorded by the chief secretary, for which a fee of 1*l.* is to be paid.

The penalty for false statements in the memorial is the avoidance of the letters of naturalization (except against purchasers for valuable considerations) superadded to the penalties of perjury.

The alien wives of natural-born or naturalized subjects are to be deemed naturalized.

Persons resident in Victoria who have been naturalized in the United Kingdom, or in any British colony in Australia, (including Tasmania and New Zealand,) Africa, or America, may, if the governor thinks fit, be naturalized in Victoria on exhibiting the certificate of naturalization, and stating in their memorials that such certificate has been obtained without fraud or intentional false statement, and that the signature and seal, if any thereto, are, to the best of their belief, genuine.

WESTERN AUSTRALIA.¹

Aliens can become naturalized by local ordinance, which is introduced on their own application, and on payment of 5*l.* for expenses of preparing the bill. The ordinance does not become law until it has received the confirmation of the Crown.

¹Colonization Circular, 1868.

Naturalized aliens may hold lands and enjoy all the rights within the colony of a natural-born subject, except the right of holding any place or office of trust in the courts of law or connected with the treasury.

PART II.—LAWS OF THE UNITED STATES.

[For the summaries of the laws and discussions on this subject which were in the appendix to the Commissioner's Report it has been thought best to substitute the statutes themselves; an explanation of the provisions of the various treaties with other powers; and a copy of the instructions to consuls on the subject of protection and passports.]

A.—*Report of the Examiner of Claims upon the provisions of the statutes and Constitution respecting naturalization and expatriation.*

BUREAU OF CLAIMS, November 4, 1873.

SIR: In this compilation of the laws on the subject of naturalization and expatriation all acts and parts of acts which have been repealed, or that have become obsolete either by time or by the circumstances which gave rise to their enactment, having ceased to exist, are omitted.

The last two provisos of Section I, act of 14th of April, 1802, are obsolete, and section II is repealed by the first section of act of May 24, 1828, which latter act is also omitted as obsolete. The act of March 22, 1816, is omitted, the first section being repealed by section I of act of May 24, 1828, and the second section being obsolete.

Section XIII of the act of March 3, 1813, providing penalty for forging certificates of naturalization, is omitted, as being repealed by implication by the act of July 14, 1870.

HENRY O'CONNOR.

Hon. HAMILTON FISH,
Secretary of State.

NATURALIZATION LAWS.

AN ACT to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly. That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the State or Territory where

such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall in no case be allowed to prove his residence.

Fourthly. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made; which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native citizen, denizen, or subject of any country, state, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 3. And whereas doubts have arisen whether certain courts of record in some of the States are included within the description of district or circuit courts: *Be it further enacted*, That every court of record in any individual State having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court shall enjoy, from and after the passing of the act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid without the consent of the legislature of the State in which such person was proscribed.

SEC. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization be, and the same are hereby, repealed.

Approved April 14, 1802.

AN ACT in addition to an act entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Approved March 26, 1804.

AN ACT for the regulation of seamen on board the public and private vessels of the United States.

SEC. 12. *And be it further enacted*, That no person who shall arrive in the United States from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States.

Approved March 3, 1813.

AN ACT in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided

five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of the first section of the act to which this is an addition, three years previous to his admission: *Provided*, Such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove, to the satisfaction of the court, that for three years next preceding it has been the *bona-fide* intention of such alien to become a citizen of the United States, and shall in all other respects comply with the laws in regard to naturalization.

SEC. 2. *And be it further enacted*, That no certificates of citizenship or naturalization heretofore obtained from any court of record within the United States shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the act entitled "An act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition specified in the first section of the act to which this is an addition, shall, if the same has been *bona fide* made before the clerk of either of the courts in the said condition named, be as valid as if it had been made before the said courts respectively.

SEC. 4. *And be it further enacted*, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition, anything in the said act, or in any subsequent act, to the contrary notwithstanding.

Approved May 26, 1824.

AN ACT to amend the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed the third of March, eighteen hundred and thirteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to wit, "without being at any time during the said five years out of the territory of the United States," be, and the same is hereby, repealed.

Approved June 26, 1848.

AN ACT to secure the right of citizenship to children of citizens of the United States born out of the limits thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

SEC. 2. *And be it further enacted*, That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

Approved February 10, 1855.

Second Session, Thirty-seventh Congress, chap. 200.

SECTION 21. *And be it further enacted*, That any alien of the age of twenty-one years and upwards, who has enlisted or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

Approved July 17, 1862.

Article XIV of the Constitution of the United States adopted July 28, 1868.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AN ACT to amend the naturalization laws and to punish crimes against the same and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation, or affidavit shall be made or taken under or by virtue of any act or law relating to the naturalization of aliens, or in any proceedings under such acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years and not less than one year, and to a fine not exceeding one thousand dollars.

SEC. 2. *And be it further enacted,* That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding as aforesaid; or sell or dispose of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party guilty of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

SEC. 3. *And be it further enacted,* That any person who shall knowingly use any certificate of naturalization heretofore granted by any court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or

has been or shall be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the court taking cognizance of the same.

And be it further enacted, That the provision of this act shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization shall be commenced, had, or taken, or attempted to be commenced; and the courts of the United States shall have jurisdiction of all offenses under the provisions of this act, in or before whatsoever court or tribunal the same shall have been committed.

Approved July 14, 1873.

AN ACT to authorize the appointment of shipping-commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen.

SEC. 29. That every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and shall have served said three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, anything to the contrary in any previous act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Approved June 7, 1872.

EXPATRIATION.

AN ACT concerning the rights of American citizens in foreign states.

Whereas the right of expatriation is a natural and inherit right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendents, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this Government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government.

SEC. 2. *And be it further enacted*, That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this Government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

SEC. 3. *And be it further enacted*, That whenever it shall be made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

Approved July 27, 1868.

B.—*Opinion of the Supreme Court of the United States, delivered at the December term, 1872, in "The Butchers' Benevolent Association of New Orleans, plaintiff in error, vs. The Crescent City Live-Stock Landing and Slaughter-House Company," and other cases commonly called "The Slaughter-House Cases."*

Mr. Justice MILLER delivered the opinion of the Court:

These cases are brought here by writs of error to the supreme court of the State of Louisiana.

They arise out of the efforts of the butchers of New Orleans to resist the Crescent City Live-Stock Landing and Slaughter-House Company in the exercise of certain powers conferred by the charter which created it, and which was granted by the legislature of that State.

The cases named above, with others which have been brought here and dismissed by agreement, were all decided by the supreme court of Louisiana in favor of the Slaughter-House Company, as we shall hereafter call it for the sake of brevity, and these writs are brought to reverse those decisions.

The records were filed in this court in 1870, and were argued before it at length on a motion made by plaintiffs in error for an order in the nature of an injunction or super-sedeas, pending the action of the court on the merits. The opinion on that motion is reported in 10 Wallace, 273.

On account of the importance of the questions involved in these cases they were, by permission of the court, taken up out of their order on the docket and argued in January, 1872. At that hearing one of the justices was absent, and it was found, on consultation, that there was a diversity of views among those who were present. Impressed with the gravity of the questions raised in the argument, the court under these circumstances ordered that the cases be placed on the calendar and re-argued before a full bench. This argument was had early in February last.

Preliminary to the consideration of those questions is a motion by the defendant to dismiss the cases, on the ground that the contest between the parties has been adjusted by an agreement made since the records came into this court, and that part of that agreement is that these writs should be dismissed. This motion was heard with the argument on the merits, and was much pressed by counsel. It is supported by affidavits and by copies of the written agreement relied on. It is sufficient to say of these that we do not find in them satisfactory evidence that the agreement is binding upon all the parties to the record who are named as plaintiffs in the several writs of error, and that there are parties now before the court, in each of the three cases at the head of this opinion, who have not consented to their dismissal, and who are not bound by the action of those who have so consented. They have a right to be heard and the motion to dismiss cannot prevail.

The records show that the plaintiffs in error relied upon, and asserted throughout the entire course of the litigation in the State courts, that the grant of privileges in the charter of defendant, which they were contesting, was a violation of the most important provisions of the thirteenth and fourteenth articles of amendment of the Constitution of the United States. The jurisdiction and the duty of this court to review the judgment of the State court on those questions is clear and is imperative.

The institution of African slavery, as it existed in about half the States of the Union, and the contests pervading the public mind for many years, between those who desired its curtailment and ultimate extinction and those who desired additional safeguards for its security and perpetuation, culminated in the effort, on the part of most of the States in which slavery existed, to separate from the Federal Government, and to resist its authority. This constituted the war of the rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African slavery.

In that struggle slavery, as a legalized social relation, perished. It perished as a necessity of the bitterness and force of the conflict. When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel. And when hard pressed in the contest these men (for they proved themselves men in that terrible crisis) offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, slavery was at an end wherever the Federal Government succeeded in that purpose. The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal Government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of amendment of that instrument. Its two short sections seem hardly to admit of

construction, so vigorous is their expression and so appropriate to the purpose we have indicated:

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

To withdraw the mind from the contemplation of this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this Government—a declaration designed to establish the freedom of four millions of slaves—and with a microscopic search endeavor to find in it a reference to servitudes which may have been attached to property in certain localities, requires an effort, to say the least of it.

That a personal servitude was meant is proved by the use of the word “involuntary,” which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word “servitude” is of larger meaning than “slavery,” as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word “slavery” had been used. The case of the apprentice slave, held under a law of Maryland, liberated by Chief Justice Chase, on a writ of *habeas corpus* under this article, illustrates this course of observation. (Matter of Turner, 1 Abbott U. S. R., 84.) And it is all that we deem necessary to say on the application of that article to the statute of Louisiana, now under consideration.

* * * * *

The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the Executive Departments, and in the public journals. It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens. Whether this proposition was sound or not, had never been judicially decided. But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen, were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, “subject to its jurisdiction” was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born within the United States.

The next observation is more important in view of the arguments of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think these distinctions and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of *the United States*." It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word "citizen of the State" should be left out when it is so carefully used, and used in contradistinction to "citizens of the United States," in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have heretofore rested, for they are not embraced by this paragraph of the amendment.

But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws.

One of these is well described in the case of *Crandall vs. Nevada*, 6 Wallace, 36. It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, "to come to the seat of Government to *assert* any claim he may have upon that Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its sea-ports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land-offices, and courts of justice in the several States." And quoting from the language of Chief Justice Taney in another case, it is said "*That for all the great purposes for which the Federal Government was established, we are one people, with one common country; we are all citizens of the United States;*" and it is as such citizens that their rights are supported in this court in *Crandall vs. Nevada*.

Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations are dependent upon citizenship of the United States and not citizenship of a State. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona-fide* residence therein, with the same rights as other citizens of that State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered.

But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the fourteenth amendment under consideration.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

The judgments of the supreme court of Louisiana in these cases are affirmed.

Mr. Justice FIELD, dissenting:

The provisions of the fourteenth amendment, which is properly a supplement to the

thirteenth, cover, in my judgment, the case before us, and inhibit any legislation which confers special and exclusive privileges like these under consideration. The amendment was adopted to obviate objections which had been raised and pressed with great force to the validity of the civil-rights act, and to place the common rights of American citizens under the protection of the National Government. It first declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." It then declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The first clause of this amendment determines who are citizens of the United States and how their citizenship is created. Before its enactment there was much diversity of opinion among jurists and statesmen whether there was any such citizenship independent of that of the State, and, if any existed, as to the manner in which it originated. With the greater number the opinion prevailed that there was no such citizenship independent of the citizenship of the State. Such was the opinion of Mr. Calhoun and the class represented by him. In his celebrated speech in the Senate upon the force bill, in 1833, referring to the reliance expressed by a senator upon the fact that we are citizens of the United States, he said: "If by citizen of the United States he means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some State or Territory, a sort of citizen of the world, all that I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or Territory, and as such, under an express provision of the Constitution, is entitled to all the privileges and immunities of citizens of the several States; and it is in this and no other sense we are citizens of the United States."

In the Dred Scott case this subject of citizenship of the United States was fully and elaborately discussed. The exposition in the opinion of Mr. Justice Curtis has been generally accepted by the profession of the country as the one containing the soundest views of constitutional law. And he held that, under the Constitution, citizenship of the United States in reference to natives was dependent upon citizenship in the several States, under their constitution and laws.

The Chief Justice, in that case, and a majority of the court with him, held that the words "people of the United States" and "citizens of the United States" were synonymous terms; that the people of the respective States were the parties to the Constitution; that these people consisted of the free inhabitants of those States; that they had provided in their Constitution for the adoption of a uniform rule of naturalization; that their descendants and persons naturalized were the only persons who could be citizens of the United States, and that it was not in the power of any State to invest any other person with citizenship so that he could enjoy the privileges of a citizen under the Constitution, and that therefore the descendants of persons brought to this country and sold as slaves were not, and could not be, citizens within the meaning of the Constitution.

The first clause of the fourteenth amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges, and immunities which belong to him as a free man and a free citizen now belong to him as a citizen of the United States, and are not dependent upon his citizenship of any State. The exercise of these rights and privileges, and the degree of enjoyment received from such exercise, are always more or less affected by the condition and the local institutions of the State, or city, or town where he resides. They are thus affected in a State by the wisdom of its laws, the ability of its officers, the efficiency of its magistrates, the education and morals of its people, and by many other considerations. This is a result which follows from the constitution of society, and can never be avoided, but in no other way can they be affected by the action of the State, or by the residence of the citizen therein. They do not derive their existence from its legislation, and cannot be destroyed by its power.

The amendment does not attempt to confer any new privileges or immunities upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by State legislation. If this inhibition has no reference to privileges and immunities of this character, but only refers, as stated by the majority in the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution or necessarily implied as belong-

ing to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated, no State could ever have interfered by its laws, and no new constitutional provision was required to inhibit such interference. The supremacy of the Constitution and the laws of the United States always controlled any State legislation of that character. But, if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

What, then, are the privileges and immunities which are secured against abridgment by State legislation?

In the first section of the civil-rights act, Congress has given its interpretation to these terms, or at least has stated some of the rights which, in its judgment, these terms include; it has there declared that they include the right "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." That act, it is true, was passed before the fourteenth amendment, but the amendment was adopted, as I have already bid, to obviate objections to the act, or, speaking more accurately, I should say, to obviate objections to legislation of a similar character extending the protection of the National Government over the common rights of all citizens of the United States. Accordingly, after its ratification, Congress re-enacted the act under the belief that, whatever doubts may have previously existed of its validity, they were removed by the amendment.¹

The terms, privileges, and immunities, are not new in the amendment; they were in the Constitution before the amendment was adopted. They are found in the second section of the fourth article, which declares that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," and they have been the subject of frequent consideration in judicial decisions. In *Corfield vs. Coryell*,² Mr. Justice Washington said he had "no hesitation in confining these expressions to those privileges and immunities which were, in their nature, fundamental; which belong of right to citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose the Union from the time of their becoming free, independent, and sovereign;" and, in considering what those fundamental privileges were, he said that perhaps it would be more tedious than difficult to enumerate them, but that they might be "all comprehended under the following general heads: Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may justly prescribe for the general good of the whole." This appears to me to be a sound construction of the clause in question. The privileges and immunities designated are those *which of right belong to the citizens of all free governments*. Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons. In the discussions in Congress upon the passage of the civil-rights act, repeated reference was made to this language of Mr. Justice Washington. It was cited by Senator Trumbull with the observation that it enumerated the very rights belonging to a citizen of the United States set forth in the first section of the act, and with the statement that all persons born in the United States, being declared by the act citizens of the United States, would thenceforth be entitled to the rights of citizens, and that these were the great fundamental rights set forth in the act; and that they were set forth "as appertaining to every freeman."

The privileges and immunities designated in the second section of the fourth article of the Constitution are, then, according to the decision cited, those which of right belong to the citizens of all free governments, and they can be enjoyed under that clause by the citizens of each State in the several States upon the same terms and conditions as they are enjoyed by the citizens of the latter States. No discrimination can be made by one State against the citizens of other States in their enjoyment, nor can any greater imposition be levied than such as is laid upon its own citizens. It is a clause which insures equality in the enjoyment of these rights between citizens of the several States while in the same State.

Nor is there anything in the opinion in the case of *Paul against Virginia*³ which at all militates against these views, as is supposed by the majority of the court. The act of Virginia, of 1866, which was under consideration in that case, provided that no insurance company, not incorporated under the laws of the State, should carry on its business within the State without previously obtaining a license for that purpose; and that it should not receive such license until it had deposited with the treasurer of the State bonds of a specified character, to an amount varying from thirty to fifty thousand dollars. No such deposit was required of insurance companies incorporated by the State,

¹ May 31, 1870; 16 Stat., 144.

² 4 Washington, Cir. Ct., 380.

³ 8 Wallace, 168.

for carrying on its business within the State; and in the case cited, the validity of the discriminating provisions of the statute of Virginia between her own corporations and the corporations of other States was assailed. It was contended that the statute in this particular was in conflict with the clause of the Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." But the court answered, that corporations were not citizens within the meaning of this clause; that the term citizens as there used applied only to natural persons, members of the body politic owing allegiance to the State, not to artificial persons created by the legislature and possessing only the attributes which the legislature had prescribed; that though it had been held that where contracts or rights of property were to be enforced by or against corporations the courts of the United States would, for the purpose of maintaining jurisdiction, consider the corporation as representing citizens of the State, under the laws of which it was created, and to this extent would treat a corporation as a citizen within the provision of the Constitution extending the judicial power of the United States to controversies between citizens of different States, it had never been held in any case which had come under its observation, either in the State or Federal courts, that a corporation was a citizen within the meaning of the clause in question, entitling the citizens of each State to the privileges and immunities of citizens in the several States. And the court observed, that the privileges and immunities secured by that provision were those privileges and immunities which were common to the citizens in the latter States, under their constitution and laws, by virtue of their being citizens; that special privileges enjoyed by citizens in their own States were not secured in other States by the provision; that it was not intended by it to give to the laws of one State any operation in other States; that they could have no such operation except by the permission, express or implied, of those States; and that the special privileges which they conferred must, therefore, be enjoyed at home unless the assent of other States to their enjoyment therein were given. And so the court held, that a corporation, being a grant of special privileges to the corporators, had no legal existence beyond the limits of the sovereignty where created, and that the recognition of its existence by other States, and the enforcement of its contracts made therein, depended purely upon the assent of those States, which could be granted upon such terms and conditions as those States might think proper to impose.

The whole purport of the decision was, that citizens of one State do not carry with them into other States any special privileges or immunities, conferred by the laws of their own State, of a corporate or other character. That decision has no pertinency to the questions involved in this case. The common privileges and immunities which of right belong to all citizens stand on a very different footing. These the citizens of each State do carry with them into other States, and are secured there by the clause in question in the enjoyment of such privileges and immunities upon terms of equality with citizens of the latter States. This equality in one particular was enforced by this court in the recent case of *Ward vs. The State of Maryland*, reported in the 12th of Wallace. A statute of that State required the payment of a larger sum from a non-resident trader for a license to enable him to sell his merchandise in the State than it did of a resident trader, and the court held that the statute in thus discriminating against the non-resident trader contravened the clause securing to the citizens of each State the privileges and immunities of citizens of the several States. The privilege of disposing of his property, which was an essential incident to his ownership, possessed by the non-resident, was subjected by the statute of Maryland to a greater burden than was imposed upon a like privilege of her own citizens. The privileges of the non-resident were in this particular abridged by that legislation.

What the clause in question did for the protection of the citizens of one State against hostile and discriminating legislation of other States the fourteenth amendment does for the protection of every citizen of the United States against hostile and discriminating legislation against him in favor of others, whether they reside in the same or different States. If under the fourth article of the Constitution equality of privileges and immunities is secured between citizens of different States, under the fourteenth amendment the same equality is secured between citizens of the United States.

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Mr. Justice BRADLEY dissenting:

Can the Federal courts administer relief to citizens of the United States whose privileges and immunities have been abridged by a State? Of this I entertain no doubt. Prior to the fourteenth amendment this could not be done, except in a few instances, for the want of the requisite authority.

As the great mass of citizens of the United States were also citizens of individual States, many of their general privileges and immunities would be the same in the one capacity as in the other. Having this double citizenship, and the great body of municipal laws intended for the protection of person and property being the laws of the State, and no provision being made, and no machinery provided by the Constitution,

except in a few specified cases, for any interference by the General Government between a State and its citizens, the protection of the citizen in the enjoyment of his fundamental privileges and immunities (except where a citizen of one State went into another State) was largely left to State laws and State courts, where they will still continue to be left unless actually invaded by the unconstitutional acts or delinquency of the State governments themselves.

Admitting, therefore, that formerly the States were not prohibited from infringing any of the fundamental privileges and immunities of citizens of the United States, except in a few specified cases, that cannot be said now, since the adoption of the fourteenth amendment. In my judgment it was the intention of the people of this country in adopting that amendment to provide national security against violation by the States of the fundamental rights of the citizen.

The first section of this amendment, after declaring that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States and of the State wherein they reside, proceeds to declare further, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;" and that Congress shall have power to enforce by appropriate legislation the provisions of this article.

Now, here is a clear prohibition on the States against making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States.

If my views are correct with regard to what are the privileges and immunities of citizens, it follows conclusively that any law which establishes a sheer monopoly, depriving a large class of citizens of the privilege of pursuing a lawful employment, does abridge the privileges of those citizens.

The amendment also prohibits any State from depriving any person (citizen or otherwise) of life, liberty, or property without due process of law.

In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law. The right of choice is a portion of their liberty; their occupation is their property. Such a law also deprives those citizens of the equal protection of the laws, contrary to the last clause of the section.

The constitutional question is distinctly raised in these cases; the constitutional right is expressly claimed; it was violated by State law, which was sustained by the State court, and we are called upon in a legitimate and proper way to afford redress. Our jurisdiction and our duty are plain and imperative.

It is futile to argue that none but persons of the African race are intended to be benefited by this amendment. They may have been the primary cause of the amendment, but its language is general, embracing all citizens, and I think it was purposely so expressed.

The mischief to be remedied was not merely slavery and its incidents and consequences; but that spirit of insubordination and disloyalty to the National Government which had troubled the country for so many years in some of the States, and that intolerance of free speech and free discussion which often rendered life and property insecure, and led to much unequal legislation. The amendment was an attempt to give voice to the strong national yearning for that time, and that condition of things, in which American citizenship should be a sure guarantee of safety, and in which every citizen of the United States might stand erect in every portion of its soil, in the full enjoyment of every right and privilege belonging to a freeman, without fear of violence or molestation.

But great fears are expressed that this construction of the amendment will lead to enactments by Congress interfering with the internal affairs of the States, and establishing therein civil and criminal codes of law for the government of the citizens, and thus abolishing the State governments in everything but name; or else that it will lead the Federal courts to draw to their cognizance the supervision of State tribunals on every subject of judicial inquiry, on the plea of ascertaining whether the privileges and immunities of citizens have not been abridged.

In my judgment no such practical inconveniences would arise. Very little, if any, legislation on the part of Congress would be required to carry the amendment into effect. Like the prohibition against passing a law impairing the obligation of a contract, it would execute itself. The point would be regularly raised in a suit at law, and settled by final reference to the Federal court. As the privileges and immunities protected are only those fundamental ones which belong to every citizen, they would soon become so far defined as to cause but a slight accumulation of business in the Federal courts. Besides, the recognized existence of the law would prevent its frequent violation. But even if the business of the national courts should be increased, Congress could easily supply the remedy by increasing their number and efficiency. The great question is, what is the true construction of the amendment? When once

we find that, we shall find the means of giving it effect. The argument from inconvenience ought not to have a very controlling influence in questions of this sort. The national will and national interest are of far greater importance.

In my opinion the judgment of the supreme court of Louisiana ought to be reversed.

C.—*Extract from the analytical index to the "Treaties and Conventions of the United States with other Powers."*

NATURALIZATION:

citizens of one nationality are to be deemed and taken to have become citizens of the other, who during a continuous residence of five years in the territories of the other have become naturalized there—Austria, Sweden and Norway; who have resided uninterruptedly there five years, and before, during, or after that time, have become or shall become naturalized—Baden; who have become or shall become naturalized, and shall have resided there uninterruptedly five years—Bavaria, Hesse, Mexico, North Germany; as explained in the protocol—Württemberg; who may or shall have been naturalized there—Belgium, Denmark; who have become or shall become naturalized—Great Britain.

the declaration of intention to become a citizen has not the effect of citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden, and Norway, Württemberg.

naturalized citizens are liable on return to their original country to be tried and punished for offenses committed before emigration, subject to the limitations established by law—Austria, Baden, Bavaria, Belgium, Hesse, Mexico, North Germany, Sweden and Norway, Württemberg; but not for emigration itself—Bavaria, Sweden and Norway.

when a naturalized citizen remains liable to trial and punishment for violation of laws of his old country relative to military duty—Austria, Baden, Belgium, Sweden and Norway.

a naturalized citizen may renounce his acquired citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden and Norway, Württemberg; but this renunciation does not entitle him to recover his former citizenship without the consent of the government—Bavaria.

a return of the naturalized citizen to his original country is not of itself a renunciation—Austria, Baden.

no fixed period of residence in his original country works of itself a renunciation—Austria, Baden.

a residence in the old country without intent to return works a renunciation—Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Württemberg.

the intent not to return may be held to exist when the residence is for more than two years—Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Württemberg; but that presumption may be rebutted by evidence—Mexico.

naturalized citizens may re-acquire their lost citizenship in the old country in the manner provided by law—Belgium, Denmark; in the manner and on the conditions prescribed by the old government—Great Britain, Sweden and Norway.

provisions concerning citizenship of inhabitants of territories annexed to the United States—France, Spain, Mexico, Russia.

D.—*Extract from the Regulations for the Consular Service.*

ARTICLE XI.—*Passports and protection of citizens of the United States.*

102. Passports are to be issued only to citizens of the United States. To issue a passport to a person not a citizen is a penal offense, punishable, on conviction, by imprisonment not exceeding one year, or by a fine not exceeding \$500, or both. *Persons who have merely declared their intention to become citizens are not citizens of the United States within the meaning of the law.*

103. Passports can be issued only at this Department, or by the chief diplomatic representative of the United States at a legation; or, in the absence of such a representative from the country, then by the consul-general, if there be one, or, in the absence of both of the officers last named, by a consul, (Form 9.)

104. Passports are to be verified only by the consular officer of the place where it is required, for which a fee of one dollar in the gold coin of the United States, or its equivalent, will be collected. In the absence of such consular officer the *visa* may be given by the principal diplomatic representative; in which case there will be no fee. (See Form 10.)

105. At the close of each quarter, returns are to be made to this Department, in the manner heretofore prescribed, of the names, and all other particulars, of the persons to whom the passports shall be granted, issued, or verified, as embraced in such passports, together with the amount of the taxes or fees collected for the same, which taxes or fees will be charged on the books of the Treasury to the person receiving the same, and will be brought to the credit of the United States in the adjustment of his quarterly accounts.

106. The rules and practice on this subject hitherto prevailing in the Department will remain unchanged. In the legations and consulates of the United States the best evidence of the citizenship of the applicant will be the production of a passport from this Department, coupled with proof that the person in whose behalf it is presented is the person named in the passport. In the absence of such evidence the applicant will make a written declaration stating his name, place of birth, age, and such other facts as shall be required. He shall also furnish such proof of his identity as shall be required by the minister or consul; and if a naturalized citizen, he shall also furnish the original, or a certified copy of the decree of the court by which he was declared to be a citizen; and it shall be the duty of the minister or consul, at the close of each quarter, to transmit to the Department a statement of the evidence on which all such passports were issued or granted.

107. When the applicant is accompanied by his wife, minor child, or servants, it will be sufficient to state in the passport the names of such persons, and their relationship, to or connection with him. A separate passport must be issued for each person of full age, not the wife or servant of another, with whom he or she is traveling.

108. No *visa* will be attached to a passport after a year from its date. A new passport may, however, be issued in its place by the proper authority, as hereinbefore provided, if desired by the holder.

109. Applications have sometimes been made to the diplomatic and consular agents of the Government for the issue of certificates of citizenship to persons residing in foreign lands and claiming to be American citizens. Hereafter no certificates will be issued, except in the form of passports under the regulations herein prescribed, unless a different form be prescribed by the laws of the country in which the agency or consulate is situated; in which case the agent or consul will transmit to the Department a copy of the prescribed form. And inasmuch as such evidence of citizenship may be claimed as *prima facie* evidence of the right of the holder to be protected by the power of the Government of the United States, so long as he conducts himself peaceably and obeys the laws of the foreign state in which he resides, therefore, to protect the dignity of such citizenship, and to guard against fraudulent assumption of it, consuls and ministers will be strict in the observance of the rules herein laid down, and will exercise due caution in issuing passports to applicants. And when their intervention is invoked on behalf of citizens of the United States residing in foreign countries, they will be careful to remember that it is as incumbent on such persons, as it is upon the citizens or subjects of such foreign countries, to observe the laws of the country in which they reside.

110. The official action of the representatives of the United States may also be asked in foreign lands in favor of natives thereof who have been naturalized in the United States. Should passports or other protection be asked for by persons, it will be the duty of the officer to satisfy himself that they have done nothing to forfeit their acquired rights. For a naturalized citizen may, by returning to his native country and residing there with an evident intent to remain, or by accepting offices there inconsistent with his adopted citizenship, or by concealing for a length of time the fact of his naturalization, and passing himself as a citizen or subject of his native country until occasion may make it his interest to ask the intervention of the country of his adoption, or in other ways which may show an intent to abandon his acquired rights, so far resume his original allegiance as to absolve the government of his adopted country from the obligation to protect him as a citizen while he remains in his native land.

111. Cautious scrutiny is enjoined in such cases, because evidence has been accumulating in this Department for some years that many aliens seek naturalization in the United States without any design of subjecting themselves by permanent residence to the duties and burdens of citizenship, and solely for the purpose of returning to their native country and fixing their domicile and pursuing business therein, relying on such naturalization to evade the obligations of citizenship to the country of their native allegiance and actual habitation. To allow such pretensions would be to tolerate a fraud upon both the governments, enabling a man to enjoy the advantages of two nationalities and to escape the duties and burdens of each.

112. If the consul is satisfied that an applicant for protection has a right to his in-

tervention, he should interest himself in his behalf, examining carefully into his grievances. If he finds that the complaints are well founded, he should interpose firmly, but with courtesy and moderation, in his behalf.

113. If redress cannot be obtained from the local authorities the consul will apply to the legation of the United States, if there be one in the country where he resides, and will, in all cases, transmit to the Department copies of his correspondence, accompanied by a report.

114. The United States have treaties with several powers regulating the rights of naturalized citizens of the United States on their return to their native lands. The protection which the passport gives is regulated in each such case by the terms of the treaty. Copies of those several treaties are given in Appendix 2.

115. It is provided by the laws of 1855 (10 Statutes at Large, p. 604) that persons born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered to be citizens of the United States, provided that the right of citizenship shall not descend to persons whose fathers never resided in the United States. Within the sovereignty and jurisdiction of the United States such persons are entitled to all the privileges of citizens; but, while the United States may by law fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it ought not, by undertaking to confer the rights of citizenship upon the subject of a foreign nation who had not come within our territory, to interfere with the just rights of such nation to the government and control of its own subjects. If, by the laws of the country of their birth, children of American citizens born in such a country are subjects of its government, the legislation of the United States will not be construed so as to interfere with the allegiance which they owe to the country of their birth while they continue within its territory. If, therefore, such a person, who remains a resident in the country of his or her birth, applies for a passport as a citizen of the United States, such passport will be issued in the qualified form shown in Form No. 11.

116. The same law of 1855 further provides that any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen. The recognition of this citizenship will be subject to the qualification above referred to.

117. Passports should be numbered, commencing with No. 1, and so continuing consecutively until the end of the incumbent's term of office.

PART III.—LAWS OF OTHER COUNTRIES.

FRANCE.

[Translation.]

The provisions of the Code Napoléon,¹ March 8, 1803, are as follows :

CHAPTER I.—*On the enjoyment of civil rights.*

7. The exercise of civil rights is independent of the quality of a citizen, which is acquired and retained only in conformity to constitutional law.

8. Every Frenchman shall enjoy civil rights.

9. Every individual born in France of an alien may, within a year following the time when he shall have attained his majority, claim the quality of a Frenchman, provided that, in case he reside in France, he declares that it is his intention to fix his domicile there, and in case he reside in a foreign country he makes a declaration that he will take up his residence in France, and that he will establish himself there within a year, counting from the act of this declaration.

10. Every child of a French citizen born in a foreign country is French. Every child of French parents born abroad, whose father shall have lost his French citizenship, may recover this citizenship by fulfilling the formalities prescribed in article 9.

11. An alien shall enjoy in France the same civil rights as those accorded to the French by the treaties of the nation to which this alien shall belong.

12. An alien woman who shall have married a Frenchman shall follow the condition of her husband.

13. An alien who shall have permission by authority of the King to establish his

¹ Code Napoleon, "Code Civil," liv. i, c. 7.

domicile in France shall enjoy all civil rights as long as he shall continue to reside therein.

14. An alien even not residing in France may be cited before French courts for the execution of obligations contracted by him in France with a Frenchman; he may be arraigned before the tribunals of France for obligations contracted by him in a foreign country with Frenchmen.

15. A Frenchman may be arraigned before a court of France for obligations contracted by him in a foreign country, even with an alien.

16. In all affairs other than those of commerce the alien who shall be the plaintiff shall be obliged to give bail for the payment of the costs and damages resulting from the process, at least when he does not possess real estate in France of a sufficient value to insure this payment.

CHAPTER II.—*On the forfeiture of civil rights.*

SECTION I. On the forfeiture of civil rights by the loss of French citizenship.

17. French citizenship shall be lost, first, by naturalization in a foreign country; second, by the acceptance, without the authorization of the King, of a public office conferred by a foreign government; third, and finally, by any establishment in a foreign country without intent to return. Commercial establishments can never be considered as having been made without intent to return.

18. A native of France who shall have lost his citizenship may always recover it on re-entering France with the authorization of the King, and on declaring that he wishes to remain there, and that he renounces all distinction contrary to French law.

19. A French woman who shall marry an alien shall follow the condition of her husband. If she become a widow she shall recover her quality of a French citizen provided that she reside in France, or that she return there with the authorization of the King, and on declaring that she wishes to establish herself there.

20. Individuals who shall regain the quality of French citizens in the cases provided for by articles 10, 18, and 19, shall not profit by it until they shall have fulfilled the conditions imposed on them by these articles, and only for the exercise of the rights opened for their benefit since this epoch.

21. The French citizen who, without the authorization of the King, shall enter a foreign military service, or who shall affiliate himself with a foreign military corporation, shall lose his French citizenship. He can re-enter France only by the permission of the King, and recover French citizenship only by fulfilling the conditions imposed on a foreigner about to become a citizen—all without prejudice to the punishment pronounced by criminal law against Frenchmen who have borne or shall bear arms against their country.

NATURALIZATION OF FRENCHMEN ABROAD.

An imperial decree of 1811 imposes severe penalties upon Frenchmen naturalized abroad without permission from their own government.

It is a question whether this decree is still in force, but it appears to have been acted upon in 1834; and it is referred to in an official communication from the French government in 1859.

At all events it has never been formally abrogated, and its existence in the French statute book must be borne in mind when the liberality of the French law in recognizing expatriation is extolled.

The other disabilities mentioned in it having been abolished, the only penalty enacted by this decree which could now be enforced is that of the seventy-fifth article of the penal code¹:

“Every Frenchman who shall have borne arms against France shall be punished by death.” (Imperial decree of the 26th of August, 1811.)

TITLE I. *French citizens naturalized in a foreign country with our authorization.*

ARTICLE 1. No French citizen can be naturalized in a foreign country without our authorization.

ART. 2. Our authorization shall be accorded by letters-patent drawn up by our chief justice, signed by our hand, countersigned by our secretary of state, indorsed by our cousin the Prince Archichancelier, inserted in the bulletin of laws, and registered in the imperial court of the last domicile of those whom they concern.

ART. 3. Frenchmen so naturalized in foreign countries shall enjoy the right of possessing, of transmitting property, and of succession thereto, even when the subject of the country where they shall be naturalized shall not enjoy these rights in France.

ART. 4. Children of a Frenchman naturalized in a foreign country, and who are born

¹ Les Cinq Codes “Code Pénal,” liv. iii, article 75.

in that country, are aliens. They recover the quality of French citizens by fulfilling the formalities prescribed by articles 9 and 10 of the Code Napoléon. Nevertheless they shall collect inheritances, and exercise all rights which shall be open to their profit during their minority, and in the ten years which shall succeed the time when they shall attain their majority.

ART. 5. Frenchmen naturalized in a foreign country even with our authorization shall never bear arms against France under penalty of being arraigned before our courts, and condemned to the punishment provided in the penal code, book 3, articles 75 and following.

TITLE II.—*French citizens naturalized in a foreign country without our authorization.*

ARTICLE 6. Any Frenchman naturalized in a foreign country without our authorization shall suffer the loss of his property, which shall be confiscated. He shall no longer have the right to inherit property, and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his, provided that such person be a French citizen.

ART. 7. It shall be proved before the court of the last domicile of the defendant, on the initiative of our "procureur-general," or on the request of the civil party interested, that the individual, having been naturalized in a foreign country without our authority, has lost his civil rights in France; and consequently, the succession opened to his profit shall be adjudged to whomsoever has the right thereto.

ART. 8. Individuals whose naturalization in a foreign country without our authorization shall have been proved, as provided in the preceding article, and who shall have received, directly or by transmission, titles instituted by the "senatus consultum" of the 14th August, 1806, shall forfeit them.

ART. 9. These titles, and the property thereto attached, shall devolve upon the next in law, excepting the rights of the wife, which shall be regulated as in case of widowhood.

ART. 10. If the individuals mentioned in article 8 shall have received any of our orders, they shall be stricken off from the registers and rolls, and shall be forbidden to wear the decoration.

ART. 11. Those who were naturalized in a foreign country, and against whom proceedings shall have taken place as provided in articles 6 and 7 preceding, if found within the territories of the empire, shall, on the first offense, be arrested and conducted across the frontier; on a repetition of the offense, they shall be indicted before our courts and condemned to imprisonment for a period of not less than one year nor more than ten years.

ART. 12. And no commutation or release from the punishment above mentioned can take place but by letters of relief granted by us in conseil privé as letters of pardon.

ART. 13. Every individual naturalized in a foreign country without our authorization, who shall bear arms against France, shall be punished in conformity with article 75 of the penal code.

The ninth article of the Code Napoléon was modified by a law of 1851:

"January 28-29, and February 7, 1851. (10th series, No. 2,730.) (article 9, C. N.) Law concerning individuals born in France of foreigners who themselves were born there, and the children of naturalized foreigners:

"ARTICLE I. Every individual born in France of an alien who himself was born there, is himself a French citizen, provided that within a year after attaining his majority, as fixed by French law, he does not claim the quality of a foreigner by a declaration made either before the municipal authority of the place of his residence, or before the diplomatic agents or consuls accredited to France by the foreign government.

"2. Article 9 of the civil code is applicable to the children of a naturalized foreigner, although born in a foreign country, if they were minors at the time of the naturalization. As regards the children born in France or abroad, who were of age at this same period, article 9 of the civil code is applicable in the year following that of the said naturalization."

By the law on the army of 1831, (21st March, 1832,) "No one shall be allowed to serve in the French army who is not a French citizen."

This provision has led to much correspondence between France and other powers, more especially the United States, respecting the right to exemption from the conscription, on their return to France, of Frenchmen naturalized abroad.

In 1859 M. Walewski furnished the American chargé d'affaires with an authoritative declaration of the views of the French government on this point:

"PARIS, November 25, 1859.¹

"SIR: I have the honor to communicate to you the reply of the government of the Emperor to the questions which the deceased Mr. Mason had put to him in his letter of

¹ Senate Ex. Doc., 1859-'60, vol. xi, p. 214.

the 27th of July last, relative to Frenchmen emigrants to the United States who have there obtained letters of naturalization.

"After having set forth the principles of the American law in the matter of naturalization, Mr. Mason reduced his inquiry to a formula, as follows:

"*First question.* Does the French legislation recognize in individuals, French by birth, the right to cause themselves to be naturalized as subjects or citizens of a foreign country, without preliminary authorization from the government?

"French legislation does not confer on a Frenchman the right to renounce his nationality, but he loses it by positive law (article 7, Code Napoléon) through naturalization in a foreign country.

"That naturalization, by the terms of the decree of August 26, 1811, may have grave consequences, provided for by that decree, when it has not been authorized by the government.

"Even in cases in which such authorization has been accorded, it effectively disperses the prejudicial results of an unauthorized naturalization, but expressly maintains the loss of nationality.

"*Second question.* Are Frenchmen by birth, but naturalized citizens of the United States, who return to France without having the intention to recover their nationality nor to establish themselves permanently, subject to the law of conscription?

"The law of conscription imposes on every Frenchman the obligation of military service. It attaches to the fulfillment of this obligation a penal sanction.

"Therefore, the Frenchman who, before he had lost that quality, shall have emigrated, thus placing himself out of the way of the obligation of military service, would assuredly be punishable on his return to France, even although he should have obtained a foreign naturalization, and he may be prosecuted, whether as refractory (article 230 du nouveau code militaire, loi du Juin, 1859) or as a deserter, (articles 235, 236, 237, of same date.)

"This, moreover, is recognized by the Government of the United States, as it is a sequence from the letter of Mr. Mason, that it refuses its protection to the Frenchman become a stranger, in the two cases following:

"1. If the obligation of military service be anterior to the epoch of emigration.

"2. If, before his emigration, the Frenchman had not satisfied the law of conscription. The question becomes more difficult when it treats of a man born abroad of French parents, and who, consequently, by the provisions of article 10 of Code Napoléon, is himself a Frenchman, and bound to military service, in conformity with article 6 of the law of March 21, 1832.

"But if, in France, the quality of citizen is now actually acquired by parentage, yet, for a long time, nativity alone conferred it, and it may still be so in the United States. In such a case it would be hard to subject to French law an individual who should have fulfilled similar obligations toward the country in which he was born.

"*Third question.* Does the French law of conscription render the Frenchman born and resident in a foreign country subject to military service in the same degree as if he had not left the country of his birth, or as if he had not caused himself to be naturalized as a foreigner?

"This question is disposed of by the solution which the Federal Government itself admits to the second.

"If, in effect, the Frenchman, before emigrating and causing himself to be naturalized in a foreign country, has not satisfied the obligation of military service, evidently he may be prosecuted in France, in case of his return, even though the return should be only accidental. Besides, he might, during his absence, have been sentenced for contumacy, and his presence in France would impose, as well on the public authority as himself, the duty of clearing off this contumacy.

"Such are the solutions which the three questions that the legation of the United States has presented to me can receive. It is difficult, however, to treat them theoretically, without knowledge of the circumstances which may have given birth to them, which often are of a nature to draw out modifications of the application of strict law.

"I will add that all the points treated in the present dispatch present veritable questions of state, upon which the government of the Emperor can only express opinions, but the solutions belong exclusively to the courts.

"Receive, &c.,

"WALEWSKI.

"MR. CALHOUN,

"*Chargé d'Affaires of the United States at Paris.*"

It will be seen from M. Walewski's note that he considered that a Frenchman naturalized abroad was liable to the law of conscription on his return to France; but a case occurred in 1860 in which it was decided by a civil tribunal that naturalization in a foreign country exempted a Frenchman from the conscription.

The case, that of Mr. Zeiter, is frequently referred to in the correspondence, and is of importance as establishing a principle of French law.

It has never been published, but a copy has now been procured from Wissembourg, where the judgment was delivered, and is printed in the addenda (F.)

These conscription cases are ordinarily dealt with by the local military tribunals, (*conseils de guerre*,) and there does not seem to have been any other instance of a recent decision on the subject by a civil court, nor does this provincial judgment appear to have been revised by a superior court.

Lord Lyons has been good enough to procure a report from M. Treitt, the counsel to the Paris embassy, upon the general question of the status in France of Frenchmen naturalized abroad, with reference especially to their liability to the conscription.

As this report gives full explanation of the French law and of the practice of the French government, it is here inserted at length:

"PARIS, January 26, 1868.

"His Excellency LORD LYONS, *ambassador of Her Britannic Majesty at Paris*:

"MY LORD: Your excellency has requested of me a copy of a judgment rendered by the French court at Wissembourg, in favor of Michel Zeiter, a French citizen by birth. The judgment is quoted by Laurence, in his notes on Wheaton, (edition of 1863,) as having discharged Michel Zeiter from all the obligations which a Frenchman owes to his country, among others the obligation to perform military service. The reason alleged for this decision is that Zeiter had been naturalized as a citizen of the United States.

"It is added that this judgment seems to be one of the rare decisions (if not the only one) in which a court has acknowledged that the naturalization of a person in a foreign country is sufficient to annul the sovereign rights of the mother country, and the obligations which he has there contracted by his birth.

"In view of the remarks which I had the honor to address to your excellency, you have referred me to a note which Count Walewski, minister of foreign affairs of France, addressed to Mr. Calhoun, the American minister, under date of November 25, 1859, which note was published in 1860 among the documents communicated to the Congress of the United States. In that note M. Walewski does not admit that a French citizen can, by the mere fact of his naturalization abroad, be exempted from the obligations imposed upon him by the laws of his country, and escape, among other requirements, the military service. In this latter case, says the minister, such refractory Frenchman incurs the penalties provided by the military code (article 230) for failure to perform military duty. M. Walewski, moreover, calls attention to the imperial decree of August 26, 1811, which provides severe penalties for Frenchmen who have become naturalized as foreigners without the authorization of their government.

"Finally, your excellency has been pleased to point me to the case of one Alibert, belonging to the class of 1839, who failed to perform military duty, and who was, on the 10th of October, 1852, sentenced to be imprisoned for one month therefor, by a court-martial at Marseilles. He appealed, however, from this sentence, to the court of revision at Toulon, and there, with the assistance of the American consul, he pleaded his naturalization in the United States, and was acquitted.

"In sum, your excellency has addressed to me the following question:

"What is the law governing a Frenchman who has been naturalized as a foreigner after his return to France?

"The question is simple, but the reply will necessarily be complex.

"I give, in the first place, a copy of a sentence of the court at Wissembourg, dated June 2, 1860. (*Vide Addenda F.*)

"As is seen, this sentence only shows that Zeiter has lost his French citizenship. The legal consequence of this showing is that he can no longer serve in the French army. It was no part of the duty of the court, however, to concern itself with the penalties and civil incapacities which Zeiter might have incurred, as we shall subsequently see. This decision is based upon law, as are several others rendered by different courts in similar cases, especially since the war between the North and South, on account of which many Frenchmen, naturalized as American citizens, returned to France.

"The naturalization of a Frenchman abroad, whatever may be his new country, involves the loss of his French citizenship, and this involves *ipso facto* incapacity for the military service. This is the case of Alibert; he doubtless proved his American citizenship, and was exempted from the penalty attached to the offense of willfully avoiding military duty, said penalty being imprisonment for from one month to one year, according to article 38 of the army law of 1832.

"The above two cases are not reported in any work on jurisprudence; they are not, however, the only ones; there are half a score of them in the bureau of military justice at the ministry of war.

"The military authorities in France observe with regret the disposition which has been manifested during the past three years, by the young men of the country, to avoid the performance of military duty.

"The ministry of war now proceeds in such cases as follows:

"When the case of a person who has sought to avoid the due performance of mili-

tary duty is brought before it, it has the party charged with the offense taken before a court-martial, for such a person is a soldier who has not rejoined his regiment.

"If the person seeking to avoid the performance of military duty pleads naturalization in a foreign country, the court-martial defers the enforcement of the penalty and grants the accused a delay, that he may be enabled to prove his foreign citizenship in the courts.

"If he obtains a judgment declaring that he has lost his French citizenship, the court-martial acquits him, but only when his naturalization took place three years before. If this is not the case, the judges enforce the penalty provided for the offense. In fact, the avoidance of military service is an offense which no mere lapse of time can cancel; it lasts until the military service is rendered. Now, the jurisprudence of courts-martial says that the offense no longer exists when the offender has become naturalized in a foreign country; thenceforward the offender who has been naturalized more than three years incurs no penalty. If, on the other hand, the naturalization did not take place more than three years previously, the ex-Frenchman is treated as a person willfully avoiding military service, and is punished, even though he be a citizen of some other country, no matter which.

"Thus, in order to escape such a penalty, the ex-Frenchman must pass at least three years abroad. If he returns before the expiration of such time, he incurs the risk of suffering imprisonment for from one month to one year, by sentence of court-martial, for he is still avoiding the performance of military duty.

"We must not forget to say that when, in this case, the person seeking to avoid military service has suffered his punishment, he is free, and his foreign citizenship prevents him from being compelled to serve in the French army.

"Such are the rules observed by the bureau of military justice at the ministry of war.

"Things are managed in about the same way for the national guard. There there are boards of verification.

"It is the duty of these boards to decide concerning the grounds of exemption claimed by persons who refuse to do military duty.

"Now, it often happens (this I say of my own knowledge) that natives of France, when called to serve in the national guard, present American or other naturalization papers. In presence of such documents these persons have been declared exempt from the service by reason of their foreign citizenship. Moreover, an opinion of the council of state of November 18, 1842, has sanctioned this system of jurisprudence.

"From all the foregoing observations what are we to conclude? It is that a Frenchman may, by getting naturalized abroad, escape the obligations which are imposed upon him by the country of his birth.

"This consequence is derived from the common law and from the exceptional law.

"Article XVII of the civil code expressly says that French citizenship is lost by naturalization acquired in a foreign country. It appears from the debates of the legislature of 1803 that the word 'acquired' was applied to an act of express will, performed according to the legal forms of the new country, and having for its object the renunciation, *proprio motu*, of French citizenship. (Locré, *Esprit du Code Civil*, vol. 1, p. 333.)

"The civil code, then, permits Frenchmen to acquire a foreign nationality. It is, in fact, a principle inherent in human liberty, a principle of natural right, that a person may leave the soil on which his birth may by chance have thrown him. This principle is admitted by all publicists from Cicero¹ down to those of our time. The French laws contain frequent enunciations of it. Naturalization in Prussia, however, is subject, it is said, to the previous authorization of the government. (Prussian code, article 2, book 17, § 127.)

"In France, however, according to the civil code, which is the common law, the right of being naturalized abroad is absolute.

"On the 26th of August, 1811, the Emperor Napoleon I promulgated a decree relative to the naturalization of Frenchmen abroad.

"Article I of this decree is as follows:

"'No Frenchman can be naturalized in a foreign country without our authorization.'

"The following articles mention the civil rights which Frenchmen naturalized in a foreign country shall continue to enjoy in France:

"Article VI is as follows:

"'ARTICLE VI. Any Frenchman naturalized in a foreign country, without our authorization, shall suffer the loss of his property, which shall be confiscated; he shall no longer have the right to inherit property, and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his; provided that such person be a French citizen.'

"Finally, Article XI gives the government the power to expel from France any

¹ Cicero, "Oratio pro Cornelio Balbo," c. 13; Grotius, lib. ii and v, § 24; Puffendorf, lib. viii, c. 11, sc. 2; Merlin, "Répertoire Général," verbo "Souveraineté," § 4; Wolf, 76th part, p. 187; "French Constitution of Frimaire, year VIII," in its 4th article; Toullier, "Code Civil," vol. i, No. 266; &c.

Frenchman naturalized in a foreign country without authorization; and, in case of his return to the territory of the empire a second time, he may be sentenced to be imprisoned for a term of not less than one year nor more than ten years.

"Napoleon I, it is said, was induced to promulgate this decree by seeing Frenchmen who were ill-disposed toward the empire among hostile nations and in foreign armies. Thus is explained the severity of this decree, which has been the object of the most bitter attacks. In the first place, it has been said that it was unconstitutional, because it was prepared and promulgated without the concurrence of the Corps Législatif, contrary to the *constitutions impériales*. Moreover, since the fall of the first empire, some writers have maintained that this decree has become obsolete. There are even decisions of the government of the Restoration which have annulled judgments rendered in virtue of this decree. (Decisions of the council of state of June 19, inserted in the *Bulletin des lois*.)

"A greater number of authors, however, have contended that this decree still had the force of a law, for the reason that it had never been attacked and annulled by the Corps Législatif. Moreover, numerous decisions have declared that the imperial decrees promulgated and executed as laws in the time of the empire have remained in force in all their provisions which have not been abrogated by subsequent laws. In fact, the decree of 1811 has been enforced in cases of legacies left by Frenchmen who had been naturalized abroad without authorization.¹

"This decree, however, is none the less a violation of the natural law, as it provides severe penalties for naturalization abroad, while all publicists proclaim the right which every man has to change his country.

"This decree is, at the present day, paralyzed in its application; in fact, the confiscation of property was abolished by the charter of 1814. Then came the law of July 14, 1819, which gives all foreigners the same rights as Frenchmen, as regards property and inheritance, without distinction between foreigners by birth and foreigners by naturalization. A solemn decision of the court of Paris has decided that this decree is not applicable to the right of inheriting property.²

"The annals of jurisprudence have not, for more than twenty years, furnished a single case in which either the government or parties interested have caused the enforcement of the decree of 1811. I think that, if the case should be presented, the courts would hesitate a long time before enforcing the rigorous provisions of this exceptional legislation.

"But how many uncertainties are there in this matter, so important, since it affects the personal status of the parties.

"Let us observe, however, that the decree of April 26, 1811, (whether it is still in force or has become obsolete,) does not annul naturalizations acquired abroad without authorization; it inflicts penalties therefor, but allows them to exist. The Frenchman has therefore a new country, to which he has been obliged to take the oath of allegiance. No one can have two countries.³ The general interest requires that no one should have two countries.⁴

"The country of adoption supplants the mother country. In my opinion the ex-Frenchman is released from his obligations toward the latter. The English government, in giving letters of naturalization to foreigners, notifies them, at the same time, that it does not intend to release them from their obligations toward their mother country.

"This is an act of prudence. But the French law is silent upon the rights which it retains over individuals who obtain naturalization abroad without authority. She places them on a similar footing to strangers so far as relates to civil rights. Thus the French law itself breaks the ties which unite an ex-Frenchman to his mother country. Aside from the confiscation of property and the loss of right of succession—penalties of 1811, to-day inapplicable and unapplied—the law imposes on the ex-Frenchman the sole obligation never to bear arms against France on pain of death.⁵

"The Frenchman who gives up his nationality knows the rights of which he will be deprived in France. The courts can refuse to give him their judgments in his disputes with foreigners. If he is plaintiff or defendant, he can be subjected to the category of *judicatum solvi*. He no longer enjoys any political or municipal rights. He is disqualified for public offices and the practice of certain professions; in short, to curtail the list, he can be expelled from French territory, like all other strangers, by a simple act of the police.⁶

"Frenchmen must have calculated inconveniences and the advantages of foreign naturalization. He is released from the burdens imposed by the mother country.

¹See, among others, a decision of the court of Pau, of March 19, 1834. (Collection of Decisions, of Dalloz, year 1835, 2d part, p. 38.) ²Decision of February 1, 1836. Dalloz's Collection of Decisions, 1836, 2d part, p. 71. ³"Statement of reasons for the first title of the Civil Code," 1803. ⁴General Repertory of Merlin, verbo "Loi," § 6. ⁵Article 75 of the Penal Code; and article 11 of the Decree of August 25, 1811; articles 21 and 22 of the Civil Code. ⁶Article 13, Loi du 3 Decembre 1849, sur les étrangers.

"This state of things is to be regretted. For instance, to become naturalized a Swiss, one year's residence and the payment of a few francs are sufficient. It is a great facility given to young Frenchmen who wish to escape the military law. This point merits the attention of French legislators, but at this moment the law must be taken as it is, and it must be conceded that naturalization abroad releases a Frenchman from his obligations toward France. The decisions of the courts only confirm the expatriation; the consequences of expatriation emanate from the laws themselves; one of these consequences is the exemption from military service.

"I believe that I have answered in every particular the question which your excellency has put to me. I have freed it from all collateral questions which the loss of French nationality suggests, but which would have rendered the subject obscure. In sum, I am led to the conclusion that France does not impose any other obligation on the ex-Frenchman than not to bear arms against her.

"I take leave to add that this conclusion shocks my inward feelings. I regret to see a simple naturalization abroad cancel all the obligations which are due to the mother country. But questions of law are not solved by the feelings alone; it is a matter of law as it is and not as it ought to be.

"Accept, &c.,

"TREITT,

"*Advocate of the Imperial Court, Counsel to the English Embassy.*"

NATURALIZATION OF ALIENS IN FRANCE.

Under the old law of France, the Dutch and Swiss and other nations had, by virtue of treaties, the rights of natives, (*indigenatús*), and by the Bourbon Family Compact of 1761 a similar privilege was conceded to Spanish subjects.

The law of May 2, 1790, provided—

"All those who, born out of the kingdom, of foreign parents, are established in France, shall be regarded as French and admitted, upon taking the civic oath, to the exercise of the rights of active citizens after five years' continuous domicile in the kingdom, if they have, besides, acquired real estate or married a French woman, or established a commercial house, or received in any city letters of citizenship."

The constitution of the 3d of September, 1791, "allows the legislative power to issue to a foreigner, for important considerations, an act of naturalization, on condition only of his residence and oath."

Thus was established the system of "*grande et petité naturalisation*," which, with various modifications, has continued in force up to the accession of the present Emperor.

The constitution of 1793 did away with the oath and declared French citizens all aliens aged 21 who had been domiciled in France for one year, and who lived by labor.

The constitution of 1795 abrogated that of 1793, and made it a condition of naturalization that an alien should have previously declared his intention to domicile himself in France.

By the terms of the third article of the constitution of 1801 "a foreigner becomes a French citizen when, after having attained the age of twenty-one years and declared the intention of settling in France, he has resided there ten consecutive years."

By a decree of the senate of 1804, confirmed by a decree of the 17th of February, 1808, the government was authorized to confer the quality of French citizen, after one year's residence, on any alien who had rendered important services to France, thus reviving the "*grande naturalisation*" of 1790, but without requiring an oath.

By an ordinance of the 4th of June, 1814, article 1, "in conformity to the ancient French constitutions, no foreigner can, from this day forth, sit, neither in the chamber of peers nor in that of the deputies, unless by important services rendered to the state he has obtained from us (the king) naturalization papers approved by the two chambers."

The privilege of "*grande naturalisation*" has been conferred on Benjamin Constant and other distinguished foreigners.

These laws were consolidated by the law of the 3d of December, 1849:

"ARTICLE 1. The President of the republic shall decide upon applications for naturalization.¹

"Naturalization cannot be granted until after inquiry made by the government respecting the morality of the foreigner, and upon the favorable opinion of the counsel of state.

"The foreigner shall be obliged, besides, to fulfill the following conditions:

"1. To have, after the age of twenty-one years, obtained authority to establish his domicile in France in conformity to article 13 of the Civil Code.

"2. To have resided ten years in France since this authorization.

"A naturalized foreigner shall enjoy the right of eligibility for the National Assembly only by virtue of a law.

¹ Bulletin des Lois, vol. cixvii, p. 545.

"2. Notwithstanding, the delay of ten years can be reduced to one year in favor of foreigners who shall have rendered important services to France, or who shall have introduced into France an industrial enterprise, or useful inventions, or distinguished talents, or who shall have founded great institutions.

"3. So long as the naturalization shall not have been issued, the authority granted to a foreigner to establish his domicile in France can always be revoked by decision of the government, which must take the advice of the council of state.

"4. The provisions of the law of the 14th October, 1814, respecting the inhabitants of the departments annexed to France, cannot be applied in the future.

"The preceding provisions do not affect, in any respect, the rights of eligibility to the National Assembly acquired by naturalized foreigners before the promulgation of the present law.

"6. The foreigner who shall have made, before the promulgation of the present law, the declaration prescribed by the third article of the constitution of the year VIII, can, after a residence of ten years, obtain naturalization according to the form indicated in article 1.

"7. The minister of the interior can, through police, order all foreigners traveling or residing in France to immediately leave French territory and cause them to be conducted to the frontier.

"He shall have the same right regarding the foreigner who shall have obtained authority to establish his domicile in France; but after the lapse of two months the measure shall cease to be in force, if the authority shall not have been revoked as indicated in article 3.

"In the departments on the frontier the prefect shall have the same right in regard to a non-resident foreigner, subject to immediate reference to the minister of the interior.

"8. Every stranger who shall have evaded the execution of the measures specified in the preceding article, or in article 272 of the Penal Code, or who, after having left France in consequence of those measures, shall have returned without the permission of the government, shall be brought before the courts and condemned to an imprisonment of from one to six months.

"After the expiration of his term of punishment he shall be led to the frontier.

"The penalties prescribed by the present law can be reduced in conformity to the provisions of article 463 of the Penal Code."

On the 29th of June, 1867, a law was passed reducing the term of residence required from ten to three years:

"ART. 1. The articles 1 and 2 of the law of 3d December, 1849, are supplanted by the following provisions:

"ART. 1. A foreigner who, after the age of twenty-one years, has, in conformity to article 13 of the Code Napoléon, obtained authority to establish his domicile in France and has resided there three years, can be admitted to enjoy all the rights of a French citizen.

"The three years shall count from the day when the application for authority shall have been registered at the ministry of justice.

"The domicile in a foreign country to fill an office conferred by the French government is equivalent to residence in France.

"It is granted upon an application for naturalization, after inquiry into the moral character of the foreigner, by a decree of the Emperor, issued upon the report of the minister of justice, subject to the council of state.

"ART. 2. The delay of three years fixed by the preceding article, can be reduced to a single year in favor of foreigners who shall have rendered important services to France, who shall have introduced into France an industrial enterprise or useful inventions, or who shall have brought to it distinguished talents, or founded great institutions, or instituted great agricultural improvements.

"ART. 2. The fifth article of the law of December 3, 1849, is repealed."

It will be seen, therefore, that there are two forms of naturalization in France:

"La grande naturalisation,"¹ which confers the privilege of sitting in the chambers, and which corresponds, in some measure, to the former English form of special naturalization by act of Parliament, repealing the disabilities of previous acts in favor of a particular person, as was done in the case of Prince Albert, and to the present naturalization by act of Parliament, as in the Bischoff-sheim case.

"La petite naturalisation" corresponds with our naturalization by certificate from the secretary of state, and is granted by *lettres de déclaration de naturalité* to aliens who have complied with the conditions of the law. The alien is supposed to have resided in France with the permission of the government, from the fact of his name and dom-

¹M. Dumangeat, in his note to M. Fœlix's *Droit International Privé*, doubts whether "la grande naturalisation" still exists, as by the decree of February 2, 1852, all electors are eligible to seats in the Corps Législatif, and the senate is composed of such citizens as the Emperor may please to select; and he cites Prince Poniatowski as an instance of a citizen naturalized by imperial decree and promoted to the senate without any special law.

icile having been registered with the ministry of the interior, as required by the police regulations from all residents.

Debate in Corps Legislatif on the army bill, December, 1867.

In the recent discussion on the law for the reorganization of the army, M. des Rotours proposed the following amendment to the first clause of the bill:

"Persons born in France of foreign parents, and having had their residence there, will be subjected to the recruiting law in the year following that of their majority.

"Those among them who wish to preserve their character of foreigners will make declaration thereof, and shall be admitted into the foreign legion."

Maréchal Niel, the minister of war, spoke in favor of the principle of this amendment, and stated that the conscription ought at all events to be extended to the sons born in France of aliens themselves born in France, and who, by the law of 1851, were declared to be Frenchmen, unless they selected the nationality of their fathers on attaining their majority.

Objection was, however, taken to making such an alteration in the laws affecting the nationality of aliens by means of a clause introduced into an army bill; and, on M. Baroche, minister of justice, undertaking that the matter should receive the careful attention of the government, M. des Rotours withdrew his amendment.

Number of English subjects who, from 1851 to 1861, obtained authority to establish their domicile in France, and of those who, during the same period, were naturalized as Frenchmen.

Années.	Admission à domicile.	Naturalizations.
1851	8	—
1852	6	—
1853	6	1
1854	6	—
1855	5	1
1856	3	—
1857	9	—
1858	24	—
1859	13	—
1860	9	2
1861, Janvier à Avril	3	—
	92	4

(For further information respecting French naturalization, see Fœlix, "Droit International Privé," already cited, and "Revue de Droit Français et Etrangers," par MM. Fœlix Duvergier, &c., vol. xii., p. 321; Article, "De la Naturalisation collective et de la perte collective de la qualité de Français," par M. Fœlix, and vol. x, p. 446; "Des Effets de la Naturalisation," par M. Fœlix; and "Dictionnaire de Droit," par M. Dalloz, "Naturalisation.")

PRUSSIA.

NATURALIZATION OF ALIENS IN PRUSSIA.

[Translation.]

In Prussia the foreigner acquires the right of citizenship by his nomination to a public office. Thus the law of the 31st of December, 1842, gives to the superior administrative authorities (*régences*) the power to accord naturalization to a foreigner who justifies it by good conduct and the means of livelihood. The law excepts only Jews, the subject of a state forming part of the Germanic Confederation, minors and other persons incapable of acting for themselves; with respect to the latter it contains special provisions. An alien woman acquires the right of a Prussian subject by her marriage with a Prussian.

Provision was made by the constitution of the Germanic Confederation for the reciprocal admission of the subjects of one state to the privileges of citizenship in the other states.

EXPATRIATION.

Extract from the laws of Prussia, of December 31, 1842, concerning the loss of the quality of a Prussian subject.

§ 15. The quality of a Prussian subject is lost—

1. By discharge upon the subject's request.
2. By sentence of the competent authority.
3. By living ten years in a foreign country.
4. By the marriage of a female Prussian subject with a foreigner.

§ 16. The discharge has to be asked for from the police authority of the province in which the subject's domicile is situated, and is effected by a document made out by the same authority.

§ 17. The discharge cannot be granted—

1. To male subjects who are between seventeen and twenty-five years of age, until they have got a certificate of the military commission of recruitment of their district, proving that their application for discharge is not made merely to avoid the fulfilling of their military duty in the standing army.

2. To actual soldiers, belonging either to the standing army or to the reserve; to officers of the militia and to public functionaries, before their being discharged from service.

3. To subjects having formerly served as officers in the standing army or the militia, or having been appointed military employés, with the rank of officers, or civil functionaries, before they have got the consent of their former chief.

4. To the persons belonging to the militia, not being officers, after their having been convoked for actual service.

§ 18. To subjects wishing to emigrate into a state of the German Confederacy, the discharge may be refused if they cannot prove that the said state is willing to receive them. (See act of the German Confederation, art. 18, No. 2, lit. A.)

§ 19. For other reasons than those specified in §§ 17 and 18, the discharge cannot be refused in time of peace. For the time of war, special regulations will be made.

§ 20. The document of discharge effects, at the moment of its delivery, the loss of the quality as Prussian subject.

§ 21. If there is no special exception, the discharge comprehends also the wife and the minor children that are still under their father's authority.

§ 22. Subjects living in a foreign country may lose their quality as Prussians by a declaration of the police authority of Prussia, if they do not obey, within the time fixed to them, the express summons for returning to their country.

§ 23. Subjects who either—

1. Leave our states without permission, and do not return within ten years, or—
2. Leave our states with permission, but do not return within ten years after the expiration of the term granted by the said permission, lose their quality as Prussian subjects.

§ 24. *Entering into public service in a foreign state.*

The entering of a subject into public service in a foreign state is allowed only after his discharge (see § 20) has been granted to him. Anybody who has obtained it is permitted to do so without restriction.

§ 25. A subject who—

1. Either takes public service in a foreign state with our immediate permission—
2. Or is appointed in our states by a foreign power, in an office established with our permission, as, for instance, that of consul, commercial agent, &c., remaining in his quality as a Prussian.

§ 26. *General disposition.*

Subjects who emigrate without having obtained their discharge, or violate, by their entering into public service in a foreign state, the disposition of § 24, are to be punished according to the laws existing in that respect.

Given under our hand and seal, Berlin, this 31st of December, 1842.

[L. S.]

FREDERICK WILLIAM.

Extract from the Constitution of Prussia, 1850.

TIT. I. Rights of the Prussians.

ART. 1. The right to emigrate cannot be restricted by the state, except with respect to the duty of military service.

See also a memorandum furnished to the United States minister at Berlin by the Prussian government in 1859. (Appendix G.)

AUSTRIA.

NATURALIZATION OF ALIENS.

In Austria an alien acquires the rights of citizenship by being named a public functionary.¹ The government can also confer those rights upon an alien who has been previously authorized to exercise a profession after ten years' residence.

No one can exercise any profession in Austria without the permission of the authorities.

Mere admission into the military service does not give the right of naturalization.

The wife of an Austrian becomes an Austrian subject by her marriage.

EXPATRIATION.

Emigration is not permitted without the consent of the proper authorities; but the emigrant who has obtained permission and who quits the empire *sine animo revertendi* forfeits his privileges as an Austrian subject.

For a fuller account of the Austrian laws, see the report by the counsel of the Vienna embassy. (Addenda H.)

BAVARIA.

NATURALIZATION OF ALIENS.

Naturalization is acquired—

1. By the marriage of a foreign woman with a Bavarian;²
2. By domicile, on affording proof of having been liberated from personal allegiance to a foreign state;³
3. By royal decree, under the supervision of the council of state.

EXPATRIATION.

By naturalization in a foreign country without having previously obtained authorization from the King;

By emigration;

By the marriage of a Bavarian woman with an alien.

WÜRTTEMBERG.

NATURALIZATION.

An alien must belong to a commune in order to have the rights of citizenship, unless he has been named to some public employment.⁴

EXPATRIATION.

The rights of citizenship are lost by emigration under the authority of government and by accepting foreign service.

NETHERLANDS.

The power of conferring naturalization rests with the King. (Articles 9 and 10 of the constitution of 1815.⁵)

¹ Fœlix, vol. i, p. 98. ² Fœlix, vol. i, p. 99. ³ Sir R. Phillimore, vol. 1, p. 352. ⁴ Fœlix, vol. 1, p. 99.
⁵ Ibid., p. 100.

RUSSIA.

An alien becomes naturalized by taking an oath of fidelity to the Emperor; but he can, if he wishes it, renounce his naturalization and return to his native country.¹

*Naturalization law of the 6th of March, 1864.*²

A.—1. A foreigner must be domiciled in the empire before he can be admitted as a Russian subject.³

2. A foreigner wishing to become domiciled in Russia must inform the governor of the province in which he wishes to reside of his desire to do so, explaining the nature of his occupation in his own country, and the pursuits he purposes to follow in Russia. On the receipt of such declaration the petitioner is considered to be domiciled in Russia, but will nevertheless be accounted a foreigner until he shall have taken the oath of allegiance.

3. Foreigners already resident in Russia, distinguished in art, trade, commerce, or in any other pursuit, may prove their domiciliation by other means than those specified in § 2.

4. A foreigner, after being domiciled five years in Russia, may apply to be admitted to Russian allegiance.

5. Foreign married women cannot become Russian subjects without their husbands.

6. The allegiance, when sworn to, is merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged as Russians.

7. Specifies rule to be observed in petitioning the minister of the interior to be admitted to Russian allegiance, (documents and declaration required, &c.)

8. It is optional with the minister to grant the above petition or not.

9. An oath to be taken.

10. Mode of taking oath.

11. In special cases, the period requisite to constitute a domicile may be shortened.

12. Children of foreigners not Russian subjects, born and educated in Russia, or, if born abroad, yet who have completed their education in a Russian upper or middle school, will be admitted to Russian allegiance, should they desire to do so, a year after they shall have attained their majority.

13. The children of foreigners wishing to become Russian subjects will be admitted on the same terms as their parents.

14. Foreigners in the Russian military or civil service, or ecclesiastics of foreign persuasions, will be admitted to Russian allegiance without period of domicile.

15. A Russian subject marrying a foreign husband, and therefore considered a foreigner, may, on the death of her husband, or in case of her divorce, return to her former allegiance.

16. The children in the above case are treated as in § 12.

17. Foreign women marrying Russian subjects, and the wives of foreigners who have become Russian subjects, are admitted as Russian subjects without taking oath of allegiance. Widows and divorced wives retain the nationality of their husbands.

18. Special enactments relative to colonists, foreign agricultural laborers, Bulgarians, &c., remain in full force.

19. Foreigners admitted to Russian nationality are placed, in respect to their rights and obligations, on a perfect equality with born Russians.

20. Provides for the speedy transaction of business in connection with the adoption of Russian nationality.

B.—*Transitional measures.*

1. Foreigners who shall have already adopted Russian nationality may return at any time to their former nationality, on payment of all claims against them, whether government or private.

2. Those who throw off their Russian allegiance may either quit the country or remain in Russia, enjoying equal rights with other foreigners. They must provide themselves with national passports within a year, if resident in European Russia or belonging to a country in Europe, or within two years, if residing in Siberia, or having to obtain such passports in any other quarter of the globe. On the lapse of those dates, without production of passport, the foreigner must either leave the country or resume his Russian nationality.

3. Exceptions in cases of deserters and Asiatics.

¹ Félix, vol. 1, p. 100. ² For a full translation of this law, see the "Journal de St. Pétersbourg," enclosed in Lord Napier's No. 207, April 13, 1864. ³ Lord Napier, No. 186; March 30, 1864.

4. Annuls all enactments compelling Russian women married to foreigners to sell their immovable property in Russia, with the exception of certain kinds of property which, as foreigners, they still have no right to possess. With respect to the enactment concerning the payment of three years' dues and export duties by foreigners wishing to leave their Russian nationality, that law is abrogated in respect to those countries which shall adopt a reciprocity in such matters.

C. Abrogating law by which a foreigner was obliged to take an oath of allegiance prior to his marriage with a Russian woman, and by which he was required to ask permission of the Emperor to contract marriage with a Russian woman of the orthodox faith.

HAMBURG.

Aliens can become naturalized after six months' residence on payment of a small fee. The law of Hamburg is said to recognize a double allegiance in persons thus naturalized, and does not require any renunciation of native allegiance.¹

BELGIUM.

The law of Belgium is the same as that of France, except that the "grande naturalisation" can only be conferred by act of the legislature.²

SWITZERLAND.

According to a paper quoted before the Aliens Committee "in some cantons the acts of naturalization are granted by the legislature, in others by the executive government. In most cantons, among others in Berne, Zurich, Vaud, and Geneva, the privileges are complete and without any restriction from the date of the act. In Tessin a naturalized foreigner can only exercise the rights of citizenship after a lapse of five years from the date of his naturalization. In Thurgovie no one can hold any office in or under the government unless he has been a burgess of the canton at least five years. In St. Gall, Thurgovie, and Tessin a foreigner, in order to obtain his naturalization, must renounce his foreign rights of citizenship or allegiance."

(See also what Mr. Treitt says respecting the facility with which Swiss citizenship is acquired.)

ITALY.

LAWS OF THE TWO SICILIES.

By the civil code of the Two Sicilies provision was made both for naturalization and expatriation.

A royal decree of the 17th December, 1817, provided that special naturalization may be granted after one year's residence to any one who has rendered important service to the state, and ordinary naturalization after ten years' consecutive residence, on giving proof of means of subsistence and declaring intention to become domiciled in the kingdom.³

Expatriation followed on entry into a foreign military service, but the person expatriated still remained subject to the penal law if here-entered the kingdom after having taken up arms against it.⁴

Permission was given to enter a foreign service on condition that the person to whom it was granted should not take any oath on accepting such service, except with a reservation that he should not be called upon to take arms against the Two Sicilies, and with the understanding that he should not be accredited to that country as ambassador or minister.

¹ Aliens Committee, p. 59. ² Ibid. p. 53. Letter from Mr. Prevost, Swiss consul. ³ Codice delle Due Sicilie, Art. 11. ⁴ Ibid. Article 25.

LAWS OF SARDINIA.¹

The civil code of Sardinia of 1837, known as the "Codice Albertino," contains the following among other provisions respecting aliens:

"19. A child born abroad of a father who enjoys civil rights is also a subject, and exercises all the rights of one."

"24. A child born in the State of an alien who has established his domicile therein, with intent to remain permanently, is considered a subject."

"The intention to establish a permanent domicile is shown by an uninterrupted residence of ten years for other than commercial purposes."

"42. Aliens who have been naturalized lose the privileges of naturalization by an absence from the kingdom for one year without the King's permission."

CONSCRIPTION LAW.²

The army law of the Kingdom of Italy is very strict. (Regolamento sul Reclutamento dell' Esercito:" March 31, 1855.)

SEC. 21. The sons of an alien born within the State, who are comprised within the terms of the 24th article of the civil code, are considered as citizens, and must inscribe their names, or cause them to be inscribed, on the levy list of the communes in which they reside.

SEC. 22. Aliens and their sons who are admitted to enjoy civil rights, and are presumed to be citizens according to the civil code, are obliged to inscribe their names in like manner, unless the class to which they belong by age has furnished its contingent.

SEC. 23. Aliens who, according to the code, are considered citizens, or have been naturalized, must inscribe their names and satisfy the obligations of the levy, although they may be required for military service and maintained to be subjects of their native state.

SEC. 24. The sons of a naturalized citizen born before his naturalization must be inscribed on the list of their last place of residence in the state.

SEC. 25. Naturalization abroad, without the King's permission, does not exempt from the conscription, and the inscription of the name must be at the last place of residence within the state.

SEC. 26. Diplomatic and consular agents abroad to send to the minister of war every year lists of the citizens resident within their jurisdiction who are liable to the conscription.

Such persons to be warned that they are required to return to their native country to fulfill their obligations, under penalty of incurring the law for the punishment of contumacy.

Regulations made for persons residing in countries distant more than six hundred miles off, with certain reservations, and for the case of those who are undergoing legal punishment in a foreign country.

REVISED ITALIAN CODE.

By a decree of the 2d of April, 1865, the government was authorized to publish a new revised civil code for the Italian kingdom, and this code was accordingly prepared and came into operation on the 1st of January, 1866.

The code is of great interest and importance as being the last code published founded on the Code Napoléon.

It may therefore be supposed to contain all the additions and alterations which experience has proved requisite.

An official copy has been furnished by Sir A. Paget for use in this memorandum.³

The following is a translation of the provisions of the first book of the code:

"Of citizenship and the enjoyment of civil rights."

"1. Every citizen enjoys civil rights who has not been deprived of them by a penal sentence.

"2. Communes, provinces, civil and ecclesiastical establishments, and in general all legally recognized public bodies, are considered as personal, and enjoy civil rights according to the laws and usages of public right.

"3. An alien is admitted to enjoy the civil rights appertaining to citizens.

"4. The child of a citizen is a citizen.

¹ "Lois Civiles et Criminelles" de M. Victor Foucher, vol. ix, Sardaigne. Code Civil. ² Atti Ufficiali. Leggi, Decreti, &c., vol. v, part i, p. 292. ³ "Codice Civile del Regno d'Italia," lib. in. tit. 1.

"5. If the father has lost his citizenship before the birth of the child, the latter is reputed a citizen if he is born within the state and resides therein.

"Nevertheless, on becoming of age, according to the laws of the realm, he may elect to take the quality of an alien on making a declaration before the authorities of the civil state in which he resides, or, if in a foreign country, before the royal diplomatic or consular agents.

"6. The child born in a foreign country, of a father who has lost his citizenship before the child's birth, is reputed as alien.

"He can, however, elect to take the quality of a citizen on making a declaration as prescribed by the preceding article, and fixing his domicile in the kingdom during the year in which he makes such declaration.

"Nevertheless, if he has accepted public employment in the kingdom, or has served in the army or navy, or otherwise satisfied the requirements of the conscription, without seeking exemption as an alien, he shall be considered a citizen without further process.

"7. When the father is unknown, the child of a citizen-mother is a citizen.

"When the mother has lost her citizenship before the birth of the child the dispositions of the two preceding articles become applicable.

"If even the mother is unknown, a child born in the kingdom is a citizen.

"8. The child of an alien who has established his domicile within the kingdom uninterruptedly for ten years is considered a citizen; residence for commercial purposes is not sufficient to constitute domicile.

"The child can, however, elect to be considered an alien on making the declaration prescribed in article 5.

"When the alien has not established his domicile in the kingdom for ten years, the child is considered an alien; but the dispositions of the two first paragraphs of article 6 are applicable to the case.

"9. An alien woman who marries a citizen acquires citizenship, and preserves it even in widowhood.

"10. Citizenship is conferred on an alien, together with naturalization, by law or by royal decree.

"Royal decree will not be effectual unless it be registered by the proper civil authority of the state in the place where the alien intends to establish or has established his domicile, and unless an oath has been taken by him, before the said official, to be faithful to the King and to observe the statutes and laws of the realm.

"The registration must be effected within six months of the date of the decree, which will be otherwise annulled.

"The wife and minor children of an alien who has obtained citizenship become citizens on condition of their also establishing their residence in the realm, but the children can elect to take upon them the quality of aliens on making the declaration prescribed in article 5.

"11. Citizenship is lost—

"(1.) On renunciation by declaration before the proper civil authority of the province wherein the person resides and subsequent emigration to a foreign state.

"(2.) By naturalization in a foreign country.

"(3.) By accepting employment from a foreign state without previous permission of the Italian government, or by entry into the military service of a foreign power.

"The wife and minor children of one who has lost his citizenship become aliens, unless they have continued to reside within the realm.

"Nevertheless, the wife can re-acquire citizenship in the case and by the means stated in the second paragraph of article 14, and the children according to the second and third paragraphs of article 11.

"12. Loss of citizenship in the cases stated in the preceding article does not exempt from the obligations of military service, nor from the penalty inflicted on any one who bears arms against his native country.

"13. The citizen who has lost his citizenship for any of the reasons stated in article 11 will recover it—

"(1.) By returning to the realm with the special permission of the government.

"(2.) By renunciation of the foreign citizenship, employment, or military service acquired in the foreign country.

"(3.) By declaring before the proper civil authority of the state an intention to establish domicile within the realm, and by so *bona fide* establishing it within a year.

"14. A woman who is a citizen, and who marries an alien, becomes alien; since by the act of marriage she acquires the citizenship of her husband.

"On becoming a widow she recovers citizenship by residence within or return to the realm on declaring in either case, before the civil authority of the state, her intention to establish her domicile therein.

"15. The acquisition or restoration of citizenship in the cases aforesaid does not take effect until the day after that in which the required conditions and formalities are complied with."

In the articles of the code of which the foregoing is a translation, the expression "cittadinanza" is used to express citizenship; but it will be seen, on referring to article 10, a distinction is drawn between citizenship ("cittadinanza") and naturalization ("naturalità.")

This is owing to the fact that Italian citizenship, properly speaking, is local; the provinces being divided, for the purposes of conscription and taxation, into districts, within one of which every Italian is bound to have his name inscribed on the district lists.

This "cittadinanza," therefore, corresponds somewhat to the German "bürgerrecht," and as a local honorary privilege is conferred on distinguished persons, like our "city freedom."

Thus Garibaldi was presented with the "cittadinanza" of all the Italian towns.

The distinction is of no great importance, as, by article 1, "every citizen enjoys civil rights," but it may be worth mentioning.

SPAIN.

Extract from the Constitution of May 23, 1845.

PART I.—ARTICLE I.

"Spaniards are—

"1. All persons born within the dominions of Spain.

"2. The children of a Spanish father and mother, though born out of the dominions of Spain.

"3. Aliens who have obtained a certificate of naturalization.

"4. Those who, without having obtained such certificate, have acquired a domicile in any part of the monarchy.

"The quality of a Spaniard is lost by naturalization in a foreign country or by admission to the employ of a foreign government without the royal license.

"The rights which aliens who may become naturalized or domiciled shall enjoy shall be determined by law."

Extracts from the royal decree of the 17th of November, 1852, respecting aliens.¹

PART I.—CAP. I.

"Aliens are—

"1. All persons born of alien fathers without the Spanish dominions.

"2. The children of an alien father and Spanish mother born without the said dominions, unless they reclaim Spanish nationality.

"3. Children born within Spanish territory of alien fathers, or of an alien father and Spanish mother, unless they make such a reclamation as aforesaid.

"4. Children born without the Spanish dominions of fathers who have lost their Spanish nationality.

"5. A Spanish woman married to an alien.

"The national vessels are considered as part of the Spanish dominions without any distinction.

"ARTICLE 2. Aliens who have obtained a certificate of naturalization, or become domiciled in accordance with the law, are considered Spaniards.

"ARTICLE 3. All persons residing in Spain who have neither become naturalized nor settled therein are aliens *domiciled or transitory*.

"ARTICLE 4. A legal domicile is acquired by those who have established themselves with a settled habitation or fixed residence for the space of three years, with the possession of real property, or the exercise of some trade or profession or known mode of livelihood, in the Spanish territory, with the permission of the superior civil authority of the province.

"ARTICLE 5. Transitory aliens are those who have not acquired a fixed residence in the kingdom in the manner prescribed by the preceding article."

CAP. II.

"ARTICLE 8. A transitory alien who desires to become domiciled must request the necessary license from the superior civil authority of the province, with proofs of his having fulfilled the conditions required by article 4.

"ARTICLES 9, 10. Registries of transitory and domiciled aliens to be kept by governors of provinces and foreign consuls.

"ARTICLE 12. Those whose names are not inscribed in such registries are not legally entitled to the rights of aliens."

¹ Coleccion Legislativa de España, tomo lvii, p. 482.

CAP. III.

"ARTICLE 18. Aliens may possess real property, exercise trades and professions, and share in all undertakings not expressly reserved by law to Spanish subjects.

"ARTICLE 21. Both transitory and domiciled aliens are subject to the payment of all imposts and taxes on the profits arising from their lands, commerce, or profession.

"ARTICLE 24. Both domiciled and transitory aliens and their children, who have not elected Spanish nationality, are exempt from military service.

"But this exemption does not extend to sons whose fathers have been born within Spanish territory, even though they retain their alien nationality."

PART IV.—CORRESPONDENCE BETWEEN THE UNITED STATES AND GREAT BRITAIN.

[*N. B.—The summary of this correspondence is omitted. It mainly relates to the doctrine of perpetual allegiance, which was abandoned by Congress in the act of 1868, (15 Statutes at Large, 223,) and which has also been abandoned by Great Britain and other powers with whom we have treaties of naturalization.*]

PART V.—CORRESPONDENCE BETWEEN THE UNITED STATES AND OTHER COUNTRIES.

PRUSSIA.

The principal correspondence has been with Prussia.

This correspondence is commenced in the United States Senate Documents, 1859-'60, (first session, Thirty-sixth Congress,) vol. ii, containing the papers laid before the Senate in compliance with a resolution of that House of the 2d of February, requesting information respecting the compulsory enlistment of American citizens in the army of Prussia.

The first paper of importance is a letter from Mr. Wheaton (the well-known jurist, who was at that time United States minister at Berlin) to Johann Knocke, a naturalized American, born in Prussia, who claimed exemption from military service on his return to that country.

"BERLIN, July 24, 1840.

"SIR: I have received your application, stating that you are a native-born subject of His Majesty the King of Prussia; that you emigrated to the United States in the year 1834, being then twenty-one years old, where you became naturalized as a citizen; that you have since returned to your native country, where you have been required to perform military duty, and desiring my official interference for your relief.

"In reply I have to state that it is not in my power to interfere in the manner you desire. Had you remained in the United States, or visited any other foreign country, (except Prussia,) on your lawful business, you would have been protected by the American authorities, at home and abroad, in the enjoyment of all your rights and privileges as a naturalized citizen of the United States. But, having returned to the country of your birth, *your native domicile and natural character* revert, (so long as you remain in the Prussian dominions,) and you are bound in all respects to obey the laws exactly as if you had never emigrated.¹

"I am, &c.,

"HENRY WHEATON.

"MR. JOHANN P. KNOCKE."

The correspondence now passes to the year 1851, when Mr. Barnard was United States minister at Berlin.

The first case is that of H. V. de Sandt, a Prussian by birth, who, after declaring his intention to become a United States citizen, had returned to Prussia, and whom the authorities at Cleves had ordered to leave that country.

¹ United States Senate Documents, 1859-'60, vol. ii, p. 6.

In reply to a representation from Mr. Barnard, M. le Coq explained on behalf of the Prussian Government that Sandt had left with the idea of evading military service; that the proofs of his naturalization in the United States were incomplete, and that the order of the Cleves authorities would not be revoked.¹

Upon this Mr. Barnard wrote to Sandt, (June 16, 1851.)²

"When you ceased to be a citizen of Prussia by your permit of emigration, and became a resident in the United States, the laws and Government of that country became your protection so long as that residence continued. When, however, you quitted your residence there before perfecting your naturalization and again took up your abode in Prussia for your own purposes, your position was a peculiar one, and required from you a peculiar and very discreet line of conduct. It was impossible for the American legation here to claim you as an American citizen."

Several other cases occurred in 1851-'52, which it seems unnecessary to give a detailed account of.³

Mr. Brandt arrested at Coblenz on the ground of being an emigration agent.

Mr. Dale, an American, imprisoned at Aix-la-Chapelle for having an informal passport.⁴

Mr. Behne summoned to military service.⁵

Dr. Gutowski, a Pole, of Posen, naturalized in the United States, who had returned to Prussia.⁶

Mr. Barnard informed Dr. Gutowski (August 3, 1852) that "having voluntarily returned to the country of your birth, where you have purchased a farm and taken up your residence, the Prussian government has a right to regard you as its subject, and so treat you in all respects."

Mr. B. Meyer, a native of Paderborn, fined 50 dollars on returning to Prussia, for having evaded military service by emigrating without a license.

It appears from a dispatch from Mr. Barnard to Mr. Webster⁷ that the Prussian government was always at this time on the lookout for the German democratic propaganda and its agents, and that naturalized German citizens gave rise to suspicion by the ostentatious manner in which they flaunted their Americanism in the face of the authorities, Mr. Born, one of the most respectable of these persons, having demanded 20,000 rix-dollars for a detention of six or eight hours.

On the 29th of October, 1852, Mr. Barnard called the attention of Baron Mantueffel to the case of John Joseph Kracke, who had been forced into the army for three years' service.⁸

On the 14th of January, 1853, Mr. Everett furnished Mr. Barnard with instructions, of which the following is an extract:⁹

"The doctrine of inalienable allegiance is, no doubt, attended with great practical difficulties. It has been affirmed by the Supreme Court of the United States, and by more than one of the State courts; but the naturalization laws of the United States certainly assume that a person can, by his own acts, divest himself of the allegiance under which he was born and contract a new allegiance to a foreign power. But, until this new allegiance is contracted, he must be considered as bound by his allegiance to the government under which he was born, and subject to its laws; and this undoubted principle seems to have its direct application in the present cases. * * If, then, a Prussian subject, born and living under this state of the law, (of military service,) chooses to emigrate to a foreign country without obtaining the 'certificate' which alone can discharge him from the obligation of military service, he does so at his own risk. * * For these reasons, and without entering into any discussion of the question of perpetual allegiance, the President is of opinion that if a subject of Prussia, lying under a legal obligation in that country to perform a certain amount of military duty, leaves his native land, and without performing that duty or obtaining the prescribed 'certificate of emigration,' comes to the United States and is naturalized, and afterwards, for any purposes whatever, goes back to Prussia, it is not competent for the United States to protect him from the operation of the Prussian law."

The doctrine thus laid down by Mr. Everett was communicated by Mr. Barnard to Baron Manteuffel on the 15th of February, 1853:¹⁰

"The Government of the United States considers that the laws of Prussia, which require a certain amount of military service of its subjects, and which prescribe the conditions in reference to this military service on which emigration is permitted, are a matter of domestic policy, in which no foreign government has a right to interfere. It considers also that, if a Prussian subject, born and living under this state of the law, emigrates to a foreign country without a compliance with those conditions, which alone can discharge him from the obligation of military service, he does so at his own personal risk. Going abroad under the burden of a duty still due to his native sovereign, his unauthorized emigration is in the nature of an escape from that duty and

¹ United States Senate Documents, 1859-'60, vol. ii, p. 9. ² Ibid., p. 13. ³ Ibid., p. 14. ⁴ Ibid., p. 18. ⁵ Ibid., p. 23. ⁶ Ibid., p. 43. ⁷ Ibid., p. 41. ⁸ Ibid., p. 44. ⁹ Ibid., p. 53. ¹⁰ Ibid., p. 57.

from the laws which prescribe and enforce it, and he remains liable, in spite of any contract he may enter into in the mean time of new allegiance to a foreign power, to have these laws executed against him whenever he returns within the territorial limits and jurisdiction of his native country."

Baron Manteuffel, in his reply¹ of the 28th of February, says: "As, however, the Government of the United States considers that it is not for its interest to make the admission of an emigrant, as citizen, dependent on the exhibition of a document proving that he had dissolved the ties by which he was attached to his old country, it is much to be feared that difficulties will still occasionally rise.

"Rarely will the Prussian government refuse the subsidiary issue of an emigration permit to individuals who, in their infancy, were taken from His Majesty's territory by their parents, except in cases when there had been a judgment of a Prussian court against the applicant.

"At the close of your note of the 15th instant, you still quote section 23 of the law of the 21st of December, 1842. I permit myself to request you will notice, sir, that the term of ten years fixed for the return to Prussia of a subject of His Majesty only runs from the 1st of January, 1843; and that if said paragraph authorizes the government to consider an uninterrupted absence of more than ten years as importing the loss of the quality of a Prussian subject, it does not, nevertheless, dispense the absentee from duties which he ought to discharge while he was a Prussian."

Several more conscription cases are given in the Senate documents, but the next document of importance is a dispatch from Mr. Wright, (who had succeeded Mr. Barnard,) dated September 28, 1858, in which he states: "No American consul or minister can shield from impressment a United States citizen born in Prussia. Is it possible that there is no remedy for this state of things? My opinion is, that if a decided and firm stand be taken by our Government during the present peculiar position of affairs in Prussia, it will lead to good results. It is certainly worthy of a trial."

Mr. Wright having furnished the United States Government with information which he had procured from the Prussian government respecting the laws of enlistment and expatriation, (see laws of Prussia,) continued to urge the necessity of steps being taken to protect the interests of United States naturalized citizens; and on the 8th of July, 1859, Mr. Cass furnished him with instructions asserting the right of the United States to carry to much greater lengths than they had hitherto done the doctrine of the immunity from native allegiance and its duties conferred by foreign naturalization:²

"The right of expatriation cannot at this day be doubted or denied in the United States. The idea has been repudiated ever since the origin of our Government, that a man is bound to remain forever in the country of his birth, and that he has no right to exercise his free will and consult his own happiness by selecting a new home. The most eminent writers on public law recognized the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism, which has been gradually disappearing from Christendom during the last century."

Mr. Cass then argues that the United States expressly recognize the right of expatriation by requiring applicants for naturalization to take an oath renouncing their native allegiance:

"The moment a foreigner becomes naturalized, his allegiance to his native country is severed forever. He experiences a new political birth. A broad and impassable line separates him from his native country. He is no more responsible for anything he may say or do, or omit to say or do, after assuming his new character than if he had been born in the United States. Should he return to his native country he returns as an American citizen, and in no other character. In order to entitle his original government to punish him for an offense, this must have been committed while he was a subject and owed allegiance to that government. The offense must have been complete before his expatriation. It must have been of such a character that he might have been tried and punished for it at the moment of his departure. A future liability to serve in the army will not be sufficient, because before the time can arrive for such service he has changed his allegiance and become a citizen of the United States. * *

* * In my letter to Mr. Hofer of the 14th ultimo I confine the foreign jurisdiction, in regard to our naturalized citizens, to such of them as 'were in the army or actually called into it' at the time they left Prussia, that is, to the case of actual desertion or a refusal to enter the army after having been regularly drafted and called into it by the government to which at the time they owed allegiance."

There is another dispatch from Mr. Cass to Mr. Wright, of the 12th of May, 1859, in the same sense, in which he remonstrates against a declaration of Baron Manteuffel "that from the existing laws of Prussia no former subject of the King, whatever his condition may be, has the right of claiming his re-admission into Prussia," as inconsistent with the rights of United States citizens under treaty with Prussia.³

¹United States Senate documents, 1858-'60, vol. ii, p. 1364. ²Ibid., p. 133. ³Ibid., p. 241.

"Under our treaty with Prussia there can be no doubt that American citizens who owe no service to Prussia, and have broken no Prussian law, have a right to visit and reside in Prussian territories without being in any way molested by the government."

The note from Baron Mantouffle here referred to is not published.

There is no further mention of the conscription of naturalized Americans in Prussia in the published correspondence until May 6, 1862,¹ when Mr. Seward writes to Mr. Judd that the question must be postponed until the United States and Prussia have been relieved from present anxieties.²

This dispatch was called forth by the release from the army, as an act of comity, of two naturalized Americans, for which Mr. Seward instructs Mr. Judd to thank the Prussian government.

In March, 1863, Mr. Seward wrote to Mr. Judd:³ "Instances have occurred where Europeans who have become naturalized citizens of the United States have left the country when their services were required, and returned to Europe to avoid needful military duty here, and then have invoked the protection of the United States to screen them from military duty there. Henceforth you will make no further applications in these military cases without specific instructions."

Nor does anything on the subject appear in the papers relating to foreign affairs for 1864-'65.

Mr. Judd revived the controversy by calling Mr. Seward's attention, on the 9th of August, 1865,⁴ to the position of naturalized Americans, many of whom, having acquired the rights of United States citizenship under the act of Congress by service in the United States Army, had returned to Prussia at the conclusion of the civil war and were now threatened with compulsory conscription.

Mr. Wright was re-appointed minister in September, 1865, and shortly afterward recommenced an agitation on behalf of naturalized Americans.

He reported to Mr. Seward that during that year at least five hundred naturalized⁵ Americans had returned to Prussia, liable to military duty according to Prussian law; but that the Prussian authorities did not succeed in placing in the army one in a hundred.

As an instance he forwarded to Mr. Seward a copy of a note from Baron Thile, stating that one Breiger a naturalized American, had been condemned to a fine of 50 thalers, or one month's imprisonment, for having left the country with intention of avoiding military duty; but that the Prussian government would allow him to make a short stay in Prussia, on submitting to the judgment and paying costs.

In November Mr. Wright had an interview with Count Bismarck,⁶ who said that "it would be almost impossible to change by legislation the Prussian laws, in view of the prejudice among the German peasants that, as all Prussians are subject to military duty, the returning adopted citizens would be exempt," and added "that the subject could only be adjusted by some treaty arrangements with the United States."

As a basis for such an arrangement Count Bismarck suggested "exemption to all Prussian subjects returning to their native land who had left before their seventeenth year, and exemption also to all other persons who were not in the army or notified to enter at the time of leaving, and who shall have been out of the country for years."

Count Bismarck further suggested that such a treaty might be brought about by a Prussian proposal for a reconsideration of the extradition treaty of 1838, especially with regard to deserters; upon which the United States might make a counter-proposal for a convention on the subject of their naturalized citizens.

On the 2d day of December Mr. Seward⁷ furnished Mr. Wright with the following instructions: "Considerations of ease and policy prevailed with this Department to allow the subject to rest during the continuance of the war. We became even less anxious upon the subject when it was seen that worthless naturalized citizens fled before the requirements of military service by their adopted Government here, and not only took refuge from such service in their native land, but impertinently demanded that the United States should interpose to procure their exemption from military service exacted here.

"Those circumstances, however, have passed away and the question presents itself in its original form. The United States have accepted and established a government upon the principle of the rights of men who have committed no crime to choose the state in which they will live, and to incorporate themselves as members of that state, and to enjoy henceforth its privileges and benefits, among which is included protection. This principle is recommended by sentiments of humanity and abstract justice. It is a principle which we cannot waive. It is not believed that the military service which can be procured by any foreign state in denial of this principle can be important or even useful to that state. The President desires that you will present the subject to the serious consideration of Count Bismarck. In doing so you will assure him

¹Parliamentary Paper "North America," No. 2, 1862. ²United States papers relating to foreign affairs, 1861-'62. ³United States papers relating to foreign affairs, 1862-'63, vol. ii, p. 1020. ⁴United States Executive Documents, 3d sess. 38th Congress, vol. iv. United States Diplomatic Correspondence, 1865, vol. iii, p. 60. ⁵Ibid., p. 64. ⁶Ibid., p. 66. ⁷Ibid., p. 68.

* * that we shall be ready to receive and consider with candor any opinions upon the subject that the Prussian government may think fit to communicate, and any suggestions * * * relative to the extradition laws of the two countries."¹

On the 16th of December Mr. Wright transmitted to Mr. Seward a memorandum with which he had been furnished by Baron Thile, showing the amendments which the Prussian government considered might be made in the extradition treaty, and adding:

"Advantages respecting the legislation on the nationality of Prussian subjects which could eventually be conceded to Prussian subjects who are or wish to become citizens of America:

"1. It would be granted that, after an absence of ten years from Prussia, not only the rights, but also the duties and obligations of a Prussian subject toward his native country cease to prevail. This is a principle which till now has been followed by Prussian authorities only in some isolated cases, but which has not been generalized nor is law in the country.

"2. The article 110 of the Prussian code says: 'Whosoever leaves Prussia with a view to avoid his enlistment in the royal army will be punished, either by a fine of 50 or 100 thalers, or by imprisonment from one month to one year.'

"An exception from this general rule might be introduced in favor of such individuals who leave Prussia before the age of seventeen years."²

On the 15th of January, 1866, the sentence on Breiger was annulled.³

In February Mr. Seward sent to Mr. Wright two letters from naturalized Americans in the Prussian army, and directed him to request their release as an act of favor.⁴

At an interview in March, Count Bismarck suggested, as a compromise, that seven years should be the term of absence to constitute expatriation, instead of ten, and remarked upon the impossibility of Prussia changing her laws on the subject of military duty. To abolish these laws, he said, would be plainly impracticable for a country situated like Prussia; while to relax their stringency in favor of American emigrants beyond the concessions (as he termed them, alluding to his protocol proposals) would not only amount to the practical abrogation of said statutes in case of all that had emigrated to the United States, or intended to do so in the future, but would be actually offering a sort of emigration premium to all able-bodied men who had attained the age when they might be called out for active service in the army.

Mr. Wright urged upon Mr. Seward to accept Count Bismarck's proposal.

Mr. Seward replied, April 9, 1866, that he would be happy to discuss the matter with Count Bismarck, but it must be in direct communication with the Prussian government, and not at second-hand; that he could not give a formal answer to an argument presented not in writing, but orally, and made known only by Mr. Wright's report.

The Austro-Prussian war gave rise to a great number of conscription cases. In most instances the offenders were either pardoned or let off with a fine.⁵

On the 24th of September, 1866, Mr. Wright reports, "There is some doubt whether the amnesty will embrace the cases of our adopted citizens who have been fined, during their absence, for neglect of military duty. Baron Roon, minister of war, will be adverse to our view of its construction. Count Bismarck will, if possible, extend its provisions to all such cases."⁶

On the same date Mr. Seward instructed Mr. Wright to "suggest to Count Bismarck the inquiry, whether it would not be deemed consistent now with the dignity and greatness of Prussia to recognize the principle of naturalization as a natural and inherent right of manhood. In reflecting upon the subject I am not able to believe that Prussia, any more than the United States, can or need to rely upon compulsory military service by subjects who have incorporated themselves as members of foreign states.

"Secondly, I know of no circumstances which would tend to place Prussia on an elevation so high among the modern nations as the adoption of that principle which lies at the basis of the American Republic."

This closes the published correspondence with Prussia on this subject.⁷

On the 22d of February, 1868, a treaty was signed at Berlin between the North German Confederation and the United States of America, consisting of six articles, of which the following are the most important:

1. Every subject of the North German Confederation naturalized in the United States of America, and having resided there during five years, shall be considered by the North German Confederation as an American subject, and treated as such. Every American citizen naturalized in the North German Confederation as an American subject, and having resided there five years, shall be considered by the Government of the United States of America as a German subject, and treated as such.

2. Every naturalized subject of either state, who may return to the land of his birth, cannot be prosecuted for any criminal offenses, unless they shall have been committed by him previously to his expatriation.

¹ United States Diplomatic Correspondence, 1866, p. 2. ² Ibid., p. 4. ³ Ibid., p. 6. ⁴ Ibid., p. 10. ⁵ Ibid., p. 47. ⁶ Ibid., p. 46. ⁷ Lord A. Loftus, No. 108, Feb. 22, 1868.

4. Every naturalized subject, who, having no intention of returning to the country of his adoption, resides continuously during two years in his former country, is presumed to have renounced his naturalization.

For this and other similar treaties see p. 149.

GERMAN STATES.

As the minor German states are now for the most part incorporated in the North German Confederation, it will probably be sufficient to reply to the correspondence without giving a summary of it:

Oldenburg, Senate documents, 1st session 36th Congress, vol. ii, pp. 129, 221; Hanover, ditto, p. 143; Frankfort, pp. 231, 235; Hamburg, p. 171. It appears from these latter papers that a system existed by which a citizen of Hamburg who wished to expatriate himself was required to procure a discharge ("austritt") from the "nexus," a law bureau appointed for the purpose.

This discharge was only given on proof being afforded that the applicant had fulfilled his military obligations. (Letter from syndic of Hamburg, June 18, 1850.)

Bremen, ditto, pp. 191, 195, 211. In a dispatch to Mr. Schleiden, of the 9th of April, 1859, Mr. Cass thus explains himself: "It is undoubtedly true that this Government has acquiesced in the opinion expressed by Mr. Wheaton, that when a citizen who has been liable to military duty leaves his own country without permission and without having performed this duty, and is naturalized in another country, he may be held to discharge his liability whenever he is found again in his native state. This opinion, however, is regarded by this Government as applying not to cases of inchoate liability, but to cases only where the liability has been complete."

This correspondence turned upon the question of the right of Bremen to surrender to another German state a naturalized American owing military duty to such state. The United States contended that such a surrender could not be acquiesced in; and Bremen maintained that there was a double duty to do it—1st, in virtue of the existing arrangements on the subject with the other states; and 2d, because a defaulter from military service in another state was a defaulter from the Federal army, of which the Bremen contingent formed a part.

AUSTRIA.

The laws of Austria regarding expatriation seem to have been sufficient to prevent any questions arising with regard to the conscription of naturalized Americans in the Austrian army; at all events no correspondence on the subject is published in the United States Congress papers.

There are, however, two cases in which the rights of subjects of the Austrian Empire naturalized in the United States have been discussed.

The first and best known is that of Martin Koszta.¹

Martin Koszta, a Hungarian, was one of the refugees of 1848-'49. He went to Turkey, where he was arrested and imprisoned at Kutahieh, but released on condition of leaving the country.

He came to the United States, and made the usual declaration of intention to become naturalized.

He then returned to Turkey in 1853, and went to Smyrna, on commercial business, where he obtained from the United States consul a *teskereh*, (or traveling pass,) stating that he was entitled to American protection.

On the 21st of June, 1853, Koszta was seized by some persons in the pay of the Austrian consulate, and taken out into the harbor in a boat; they then threw him into the sea, and he was picked up by a boat from the Austrian man-of-war *Hussar*.

The United States consul went on board to remonstrate, but the captain of the *Hussar* persisted in retaining Koszta.

On being informed of the circumstances the United States chargé d'affaires at Constantinople requested the captain of the United States ship of war *Saint Louis* to demand Koszta's release, and, if necessary, to have recourse to force.²

The *Saint Louis* then went down to Smyrna, and the captain, in pursuance of his instructions, stated to the commander of the *Hussar* that unless Koszta was at once delivered to him he should take him by force of arms.

As such a conflict would have led to the destruction of the greater part of the shipping, and probably of the town, the French consul offered his mediation, and Koszta

¹"Hertslet's State Papers," vol. xlv, p. 925-1042. Dana's edition of "Wheaton," note, p. 146. ²"State Papers," vol. xlv, p. 935.

was then given over to his care to be kept until the decision of the respective Governments was ascertained.

The matter was eventually compromised by an arrangement being come to between the Austrian internuncio and the United States minister at Constantinople that Koszta should be shipped back to the United States, the Austrians reserving the right to proceed against him in case he returned to Turkey.

"Le gouvernement impérial se réserve cependant de procéder contre cet individu conformément à ses droits, dès qu'il serait surpris une autre fois sur le territoire ottoman."¹

It is to be remarked that the Turkish government had protested against the invasion of their territorial jurisdiction by the Austrian consul and captain.²

On the 29th of August, 1853, the Austrian chargé d'affaires at Washington³ presented a formal remonstrance to the United States Government, protesting against the claim of the United States to afford protection to Koszta, and urging them to disavow the conduct of their agents, and to grant reparation for the insult offered the Austrian flag.

Mr. Marcy replied on the 26th of September, 1853.⁴

In this note, which is of great length, Mr. Marcy gives a full account of the affair, and maintains the propriety of the course adopted by the United States minister, consul and captain, pointing out that, independently of the question whether Koszta was or was not entitled to American protection, the Austrians could have no right to seize him upon Turkish soil.

The following are some of the principal passages in which Mr. Marcy deals with the right of Koszta to United States protection:⁵

"There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connection in the nature of a civil contract, indissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is, that the citizen or subject, having faithfully performed the past and present duties resulting from this relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth and adoption, seek through all countries for a home, or select anywhere that which offers him the fairest prospect of happiness for himself and his posterity. * * * * The proposition that Koszta at Smyrna was not an Austrian subject can be sustained on another ground. By a decree of the Emperor of Austria of the 24th of March, 1832, Austrian subjects leaving the dominions of the Emperor without permission of the magistrate, and a release of Austrian citizenship, and with an intention never to return, become 'unlawful emigrants,' and lose all their civil rights at home.

"Mr. Hulsemann,⁶ as the undersigned believes, falls into a great error, an error fatal to some of his most important conclusions, by assuming that a nation can properly extend its protection only to native-born or naturalized citizens. This is not the doctrine of international law, nor is the practice of nations circumscribed within such narrow limits. This law does not, as has been before remarked, complicate questions of this nature by respect for municipal codes. In relation to this subject it has clear and distinct rules of its own. It gives the national character of the country, not only to native-born and naturalized citizens, but to all residents in it who are there with, or even without, an intention to become citizens, provided they have a domicile therein. Foreigners may, and often do, acquire a domicile in a country, even though they have entered it with the avowed intention not to become naturalized citizens, but to return to their native land at some remote and uncertain period, and whenever they acquire a domicile, international law at once impresses upon them the national character of the country of that domicile. It is a maxim of international law that domicile confers a national character; it does not allow any one who has a domicile to decline the national character thus conferred; it forces it upon him often very much against his will, and to his great detriment. International law looks only to the national character in determining what country has the right to protect. If a person goes from this country abroad, with the nationality of the United States, this law enjoins upon other nations to respect him, in regard to protection, as an American citizen. It concedes to every country the right to protect any and all who may be clothed with its nationality."

Mr. Marcy then quotes several authorities to show what constitutes domicile:⁷

"As the national character, according to the law of nations, depends upon the domicile, it remains as long as the domicile is retained, and is changed with it. Koszta was therefore vested with the nationality of an American citizen at Smyrna, if he, in contemplation of law, had a domicile in the United States." * * "There may be a reluctance in some quarters to adopt the views herein presented relative to the doctrine of domicile and consequent nationality, lest the practical assertion of it might in some

¹ "State Papers," vol. xlv, p. 1015. ² Ibid., p. 971. ³ Ibid., p. 972. ⁴ Ibid., p. 984. ⁵ Ibid., p. 987. ⁶ Ibid., vol. xlv, p. 996. ⁷ Ibid., vol. xlv, p. 998.

instances give a right of protection to those who do not deserve it. Fears are entertained that this doctrine offers a facility for acquiring a national character which will lead to alarming abuses; that under the shadow of it political agitators, intent upon disturbing the repose of their own or other countries, might come to the United States with a view to acquire a claim to their protection, and then to return to their former scenes of action, to carry on, under a changed national character, their ulterior designs with greater security and better success. This apprehension is believed to be wholly unfounded. The first distinct act done by them toward the accomplishment of these designs would disclose their fraudulent purpose in coming to and seeking a domicile in this country. Such a development would effectually disprove the fact that they acquired a domicile here, and with it our nationality."¹

SIMON TOUSIG.

This case further elucidates and explains the doctrine of domicile advocated by the United States in the affair of Martin Koszta.

Tousig, a subject of Austria, had acquired a domicile in the United States, but was not naturalized, and voluntarily returned to Austria with a passport from the American Department of State. He was arrested on charge of offences committed before leaving Austria. He appealed to the United States minister for protection, who laid the case before the State Department. Mr. Marcy replied on the 10th of January, 1854:²

"I have carefully examined your dispatches relating to the case of Simon Tousig, and regret to find that it is one which will not authorize a more effective interference than that which you have already made in his behalf. It is true he left this country with a passport issued from this Department; but as he was neither a native-born nor naturalized citizen, he was not entitled to it. It is only to citizens that passports are issued.

"Assuming all that could possibly belong to Tousig's case—that he had a domicile here, and was actually clothed with the nationality of the United States—there is a feature in it which distinguishes it from that of Koszta. Tousig voluntarily returned to Austria and placed himself within the reach of her municipal laws. He went by his free act under their jurisdiction, and thereby subjected himself to them. If he had incurred penalties or assumed duties while under these laws, he might have expected they would have been enforced against him, and should have known that the new political relation he had acquired, if indeed he had acquired any, could not operate as a release from these penalties. Having been once subject to the municipal laws of Austria, and while under her jurisdiction violated those laws, his withdrawal from that jurisdiction, and acquiring a different national character, would not exempt him from their operation whenever he again chose to place himself under them."

BAVARIA.

Mr. Attorney-General Black,³ in the case of Amthor, a Bavarian, naturalized in the United States, who returned to Bavaria, gave an opinion, in 1857, admitting the right to renounce the citizenship of naturalization and resume that of birth, by an actual and *bona fide* return with family and property and a change of permanent domicile. Mr. Black said that no mode of renunciation was prescribed; but, as the right was admitted, if the fact and intent coincided and were sufficient to satisfy the Government of the United States, and Bavaria treated Amthor as a citizen, he could not claim the rights of a citizen of the United States or invoke its protection.

FRANCE.

The first of the papers in this correspondence presents another phase of the American doctrine.⁴

"DEPARTMENT OF STATE, *Washington, June 1, 1852.*

"SIR: I have to acknowledge the receipt of your letter to Mr. Reddall, of the 28th ultimo, inquiring whether M. Victor B. Delpierre, a native of France, but a naturalized citizen of the United States, can expect the protection of this Government in that country when proceeding thither with a passport from this Department. In reply, I have to inform you that if, as is understood to be the fact, the Government of France

¹ State Papers, vol. xliv, p. 1,000. ² Lawrence's Appendix to "Wheaton," ed. 1863, p. 929. Cong. Doc., 33d Congress, 1st sess. H. R. Ex. Doc. No. 41. ³ Dana's "Wheaton," sec. 5, p. 144. ⁴ Senate Documents, 1859-'60, vol. ii, p. 55.

does not acknowledge the right of natives of that country to renounce their allegiance, it may lawfully claim their services when found within French jurisdiction.

"I am, &c.,

DANIEL WEBSTER.

"J. B. NINES, Esq., *New York.*"

LUCIAN ALIBERT.

This case has already been referred to in M. Treitt's report.¹

Alibert was a native of Digne, Basses Alpes. He went to the United States in 1838, at the age of 18, and, after going through the usual formalities, was naturalized in 1846. In 1852 he returned to France and was arrested while on a visit to Dignes as an "insoumis" of 1839, and pleaded his naturalization as exempting him from service. The United States consul at Marseilles applied to the general commanding the district, who informed him that Alibert's claim was founded in right, if his naturalization was really dated in 1846, as his naturalization would incapacitate him from serving in the French army, and the date of it would prove that more than three years had elapsed since the offense was committed, (that being the period of limitation required by the penal code,) and that he could not consequently be proceeded against for insubordination. Nevertheless Alibert was brought before a "conseil de guerre" at Marseilles, and condemned to a month's imprisonment.

The cause was then brought by appeal before a superior military court at Toulon, and the sentence quashed, thereby establishing Alibert's immunity from conscription.

MICHEL ZEITER.

In 1859 Mr. Cass² directed the United States minister at Paris to procure information on the French law of naturalization, &c., and at the same time instructed him as follows: "This Government maintains the right of expatriation and naturalization, and maintains also that if a foreign-born citizen naturalized here returns to his native country, he is not liable to military duty, except such as was actually due and which he had been called upon to perform before his emigration. In any communication you may have with the minister for foreign affairs you will make known to him these views of the United States."

Accordingly, when the case of Michel Zeiter arose in 1860, Mr. Faulkner made a communication in this sense to M. Thouvenel:³ "Our doctrine is that the naturalized emigrant cannot be held responsible upon his return to his native country for any military duty the performance of which has not been actually demanded of him prior to his emigration. A prospective liability to service in the army is not sufficient. The obligation of contingent duties depending upon time, sortition, or events thereafter to occur, is not recognized. To subject him to such responsibility, it should be a case of actual desertion or refusal to enter the army, after having been actually drafted into the service of the government to which he at the time owed allegiance."

The case of Michel Zeiter is so fully explained in M. Treitt's report, and in the copy of the judgment of the provincial court in Addenda F, that it is unnecessary to say anything more about it here.

President Buchanan referred to these cases in his message to Congress of the 3d of December, 1860:

"With France, our ancient and powerful ally, our relations continue to be of the most friendly character. A decision has recently been made by a French judicial tribunal, with the approbation of the Imperial government, which cannot fail to foster the sentiments of mutual regard that have so long existed between the two countries. Under the French law no person can serve in the armies of France unless he be a French citizen. The law of France recognizing the natural right of expatriation, it follows as a necessary consequence that a Frenchman by the fact of having become a citizen of the United States has changed his allegiance and has lost his native character. He cannot therefore be compelled to serve in the French armies in case he should return to his native country. These principles were announced in 1852 by the French minister of war, and in two late cases have been confirmed by the French judiciary. In these, two natives of France have been discharged from the French army because they had become American citizens. To employ the language of our present minister to France, who has rendered good service on this occasion, 'I do not think our French naturalized fellow-citizens will hereafter experience much annoyance on this subject.' I venture to predict that the time is not far distant when the other continental powers will adopt the same wise and just policy which has done so much honor to the enlightened government of the Emperor. In any event our government is bound to protect the rights of our naturalized citizens everywhere, to the same extent as though they

¹Senate Documents, 1859-'60, vol. ii, p. 176. ²Ibid., p. 198. ³Lawrence's Appendix to "Wheaton," p. 928.

had drawn their first breath in this country. We can recognize no distinction between our native and naturalized citizens."

The next published correspondence is in 1866 respecting the cases of MM. Schneider, Cochener, Todry, and Pierre.¹

These persons were all naturalized in the United States, and had returned to France with American passports.

The cases were all alike. The men were severally arrested as "insoumis" on their arrival within their native communes, and detained for some time in prison, with more or less rough usage, until the local tribunals decided on their claims for exemption.

They were all eventually discharged.

The United States minister at Paris, Mr. Bigelow, remonstrated in strong terms against these proceedings, and M. Drouyn de Lhuys in each case replied that the complainants must prove their claims to exemption in the usual manner, citing the case of Zeiter to show the impartiality with which such applications were dealt with.² If François Pierre had been an American by birth, or a citizen of the United States under other circumstances, his passport would certainly have protected him from prosecution for the offense in question; but when a person "returns to his native country with foreign naturalization papers, it is not just to lay aside his nativity and admit his new nationality as protecting him by retroactive effect, contrary to every principle of law, against former acts, and particularly against offenses of which he was guilty, a Frenchman, as in the present case. His presence in his native country obliges him to explain his case by the laws of the land, and as long as he has not done that he is considered to have preserved his primitive citizenship."

M. Drouyn de Lhuys,³ however, suggested at an interview on the 28th of April, 1866, that naturalized Americans should be directed to proceed at once on returning to France to the *mairie* where their names were enrolled, and to claim exemption from the conscription, and get their names removed from the list.

Mr. Seward,⁴ on the 7th of May, 1866, instructed Mr. Bigelow to urge on the French government that an American passport should be considered sufficient proof of nationality, and that if a person representing himself to be an alien were conscribed, the military tribunals should decide summarily on his claims to exemption; and if they decided against him, the matter should be at once submitted to the government for diplomatic discussion.

SPAIN.

In communicating to Congress the papers respecting the imprisonment, in Cuba, of Mr. John S. Thrasher,⁵ a native American, domiciled in that island, who had been condemned to eight years' imprisonment for assisting Lopez' expedition, Mr. Webster stated, "The first general question then is, as to his right to exemption from Spanish law and authority on the ground of his being a native-born citizen of the United States.

"The general rule of the public law is that every person of full age has a right to change his domicile; and it follows, that when he removes to another place, with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile; and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period. * * *

"In questions on this subject the chief point to be considered is the *animus manendi*, or intention of continued residence; and this must be decided by reasonable rules and the general principles of evidence.

"If it sufficiently appear that the intention of removing was to make a permanent settlement, or a residence for an indefinite time, the right of domicile is acquired by a residence even of a few days. * * *

"It is undoubtedly true that an American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be treated unjustly, he would have a right to claim that protection. * * * But his situation is completely changed when, by his own act, he has made himself the subject of a foreign power. * * *

"But, independently of a residence with the intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance, it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and

¹ United States Diplomatic Correspondence, 1866, Part I, p. 291. ² United States' Senate Documents, vol. ii, p. 302. ³ Ibid., p. 299. ⁴ Ibid., p. 304. ⁵ President's message, December 23, 1851. Executive Documents, 1 sess. 32d Congress, vol. iii, No. 10.

may be punished for treason or other crimes, as a native-born subject might be unless his case is varied by some treaty stipulations; but this duty of obedience to the laws, arising from local and temporary allegiance, ceases, of course, the moment he transfers himself back to his original country. * * * *

Our citizens who resort to countries where trial by jury is not known, and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own government. * * * *

They have chosen to settle themselves in a country where jury trials are not known, where the privilege of the writ of *habeas corpus* is unheard of, and where judicial proceedings in criminal cases are brief and summary. Having made this election they must abide its consequences.

"No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws, and the sovereign power of that country, unless he be authorized so to do by the virtue of treaty stipulations."

In case of Ignacio Tolen, a native of Spain, but naturalized in the United States, Mr. Webster (June 25, 1852,) said,¹ "If that government (Spain) recognizes the right of its subjects to denationalize themselves and assimilate with the citizens of other countries, the usual passport will be a sufficient safeguard to you; but if allegiance to the Crown of Spain may not legally be renounced by its subjects, you must expect to be liable to the obligations of a Spanish subject, if you voluntarily place yourself within the jurisdiction of that government."

In 1860 a case occurred at Havana, of Sabino de Liaño, a native of Spain naturalized in the United States, being arrested as a conscript.²

In reply to the representations of the United States consul, the captain-general informed him that by a royal decree of the 17th of November, 1852, "the foreigner obtaining naturalization in Spain, as well as the Spaniard obtaining it within the territory of another power, without the knowledge and authorization of his respective government, shall not exempt himself from the obligations which were consequent to his primitive nationality, although the subject of Spain may in other respects lose the quality of Spaniard, conformably to what is prescribed in article 1 of the constitution of the monarchy."

Eventually, the proceedings taken against Mr. Liaño were suspended, and a bond which he had entered into to provide a substitute canceled by the governor-general.³

DENMARK.⁴

A Dane named Boie Smidt,⁴ who had visited the United States and declared his intention of naturalizing, having, on his return to Copenhagen in September, 1859, been arrested and impressed into the Danish navy, the United States minister demanded his release.

The Danish government replied,⁵ that "if it should turn out, upon an investigation, that the said Mr. Smidt, when he signified his intention to be naturalized in the United States, was, under the laws of the country, bound afterwards to perform his military service in his native country," the laws then in force would not admit of his release.

The United States minister rejoined⁶ that "it is a settled doctrine of the Government which I have the honor here to represent, as I understand it, that a naturalized citizen of the United States, from and after the date of his naturalization, both at home and abroad, is placed on the very same footing with a native citizen, with the exception that none but a native citizen can occupy the office of President or Vice-President of the United States; and the Government will be disposed to extend to the one class of citizens the same protection which justly belongs to the other, at all times and in all places."

Mr. Smidt got tired of performing military duty in a fortress while his case was being discussed, and procured a substitute.

The United States minister then asked either for the discharge of the substitute, or the refund of money paid by Mr. Smidt for engaging him.

It does not appear how the matter ended.

RUSSIA.

In July, 1864, the Russian minister at Washington informed Mr. Seward that,⁷ according to existing laws of Russia, every foreigner who becomes a subject of Russia

¹ Halleck's "International Law," chap. xxix, p. 698. ² Senate documents, 1859-'60, vol. ii, p. 224. ³ United States Senate documents, vol. ii, p. 228. ⁴ Ibid, p. 203. ⁵ United States Senate documents, vol. ii, p. 204. ⁶ Ibid., p. 205. ⁷ Executive documents of the House of Representatives, 1864-'65, vol. iii, part iii, p. 301.

and at a later time renounces this character, is obliged to pay before his departure the equivalent for the taxes for three years, and some other imposts, to obtain the right to export his property.

"The imperial government has stated to me that, under a new regulation, the subjects and citizens of powers by whom the dues above mentioned are not enforced, will be exonerated therefrom."

Mr. Seward replied that no such impost was levied in the United States.

On the 31st of January, 1866, Mr. Seward¹ directed Mr. C. M. Clay, the United States minister at St. Petersburg, to do what he could, should it be deemed advisable, to procure the release of a Russian Pole, Benjamin Goldberg, a naturalized citizen of the United States, who was said to have been arrested and forced into the Russian army.

No further papers respecting this case are published.

On the 14th of July, 1866, Mr. Clay reports:²

"I am informed that Stanislaus Pongoski, a Russian Pole and naturalized citizen of the United States, has been proved to have become our fellow-citizen without leave of the Emperor of Russia, and by the article 367 of the penal code he has been deprived of all the rights of Russian citizenship and banished forever from the Russian Empire, and this sentence has been put into execution. I don't see that we can complain, as it settles the question of denaturalization virtually in our favor, and avoids unpleasant issues."

Mr. Seward, in reply, says that he is "glad to see that the Russian government has accepted that important principle definitively. Certainly there is no cause of complaint to the proceeding on our part, provided that Pongoski does not feel himself aggrieved."

"The case may, perhaps, demand careful examination if it shall turn out that the decree of perpetual exclusion thus pronounced against an admitted American citizen was based upon no other ground than his having voluntarily accepted that character under the Constitution and laws of the United States. In the mean time we may presume that political or other offenses entered into the merits of the decree."

COSTA RICA.³

In December, 1865, Mr. Riotte³ reported to Mr. Seward that "young men from this republic go to the United States, remain there for a short time, obtain, by means of hard swearing and an inexcusable levity on the part of the court, letters of naturalization, upon which they return for good to their native country, or leave the United States for other parts; and all this for the sole purpose of making this citizenship a bar against the enforcement of whatever obligation by their native or any other government. * * * I think it bad that clerks of courts, too, are authorized to grant such papers, and it is not made the exclusive duty and privilege of courts in open session, which would certainly prevent a good deal of false swearing. But the main difficulty is, in our large cities two witnesses can be got at any moment, and very cheap, to swear to anything; that the persons hunting up such witnesses have, as a matter of course, made up their minds beforehand to commit perjury; that there is no officer bound to look after the interest of the United States in such cases, and that the judges or clerks, instead of requiring two good, substantial witnesses, (they ought to know them personally,) seem to be satisfied with almost any class of witnesses."

Messrs. Francisco and Juan Quezada, who had obtained naturalization under such circumstances, appealed to their American citizenship to protect them from the Costa Rica conscription.

The Costa Rican authorities⁴ could not, "even for a moment, admit that a Costa Rican naturalized in a foreign country continues that character after having returned to the country with the implicit intention to live in it;" but agreed to consult Mr. Riotte.

Mr. Riotte refused to interfere, first, because Messrs. Quezada had become re-dom-iciled in Costa Rica, and, secondly, as he stated to them, "even assuming, for argument's sake, that you were still citizens of the United States, there is another consideration which is not to be lost sight of in deciding upon your second request. A law of Costa Rica (of December 2, 1850,) imposes upon every citizen the obligation to serve in the army. You had not complied with that duty previous to your adoption as American citizens; and it is the enforcement of that very duty which has brought out your claim to the United States citizenship. Now, I know well that the claim of an adopted citizen's native country to the fulfillment of his military duty toward that country, and the extent of that claim, was, and is at this moment, a mooted question between the Government of the United States and several European monarchies. Until that question is decided, however, I can scarcely fail if I adopt the view of one of our greatest statesmen, when he answered an adopted citizen, in a case perfectly the same as yours,

¹ Diplomatic Correspondence, 1866, part i, p. 391.

² Ibid., p. 416.

³ United States Diplomatic Correspondence, 1866, vol. ii, p. 430.

⁴ Ibid., 431.

‘But, having returned to the country of your birth, your native domicile and national character revert, and you are bound to obey the laws exactly as if you had not emigrated.’”

On the 16th of February, 1866, Mr. Seward wrote to Mr. Riotte, “The proceedings you have adopted, and the decision you have arrived at in the premises, are approved.”

The irregular proceedings by which Costa Ricans and others obtain certificates of naturalization in the United States without any intention of residing there, to which Mr. Riotte thus called attention, are referred to in the recent report of the Committee on Foreign Affairs of the House of Representatives.

[*N. B.—In addition to the foregoing résumé in the appendix to the royal commissioner's report, reference is made to the correspondence between Mr. Fish and Baron Lederer, (ante, pages 77, 78,) to the correspondence between Mr. Washburn and Mr. Fish, (ante, pages 245, 249, and 256,) and to the following correspondence, printed in connection with Lord Tenderden's résumé, under the direction of the Secretary of State.*]

Mr. Williams to Mr. Fish.

DEPARTMENT OF JUSTICE,
Washington, December 21, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, inclosing a copy of a communication from Baron Lederer, of the 21st ultimo, and presenting for my consideration the following case:

One François A. Heinreich, now resident in Austria, was born in the city of New York in 1850, of Austrian parents, who were then temporarily residing in that city, but who never became naturalized. The family returned to Austria when François was about two or three years old, taking him with them; and he has resided there since the return of his parents to that country. It is stated that at one time François obtained a passport as a citizen of the United States from the American consul at Stuttgart, in Wurtemberg. It is also stated that in 1866 and 1867 he was furnished with Austrian passports, under the protection of which he traveled in the quality of an Austrian subject.

François is now called upon to render military service in Austria, but claims to be exempt therefrom on the ground that he is an American citizen; and he desires this Government to protect him in that claim. The Austrian government, however, denies that he is an American citizen, and insists that he must be considered an Austrian subject. Upon the above state of facts my opinion is requested as to whether the said François is a citizen of the United States and entitled to protection. The first article of the convention of September 20, 1870, between the United States and the Austro-Hungarian monarchy, reads as follows:

“Citizens of the Austro-Hungarian monarchy who have resided in the United States of America uninterruptedly at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Austria and Hungary to be American citizens, and shall be treated as such. *Reciprocally citizens of the United States of America who have resided in the territories of the Austro-Hungarian monarchy uninterruptedly at least five years, and during such residence have become naturalized citizens of the Austro-Hungarian monarchy, shall be held by the United States to be citizens of the Austro-Hungarian monarchy, and shall be treated as such.* The declaration of an intention to become a citizen of the one or the other country has not, for either party, the effect of naturalization.”

As a general rule, a person born in this country, though of alien parents who have never been naturalized, is under our law deemed a citizen of the United States by reason of the place of his birth, (10 Opin., 321, 328, 329; and see also section 1 to the fourteenth amendment to the Constitution.) But the article of the convention just quoted—the right of an American citizen to change his national character, and become a citizen of Austria—is clearly recognized; but it is required that he shall have had a residence of five years in that country, besides being naturalized there, before the United States are bound to consider and to treat the person so naturalized as an Austrian citizen. In the case under consideration, therefore, though the said François is a native of this country, and as such was originally clothed with American nationality, yet, he having resided in Austria uninterruptedly far beyond the period mentioned, the question submitted resolves itself practically into this inquiry, whether during that time he has acquired Austrian citizenship?

It would seem from the communication of Baron Lederer that, under the law of Austria, a foreign-born child of Austrian parents takes the nationality of the latter, and is regarded as an Austrian citizen. Assuming this to be correct, and I am satisfied it is, a doubt might be suggested whether political duties or burdens (such as military service) could rightfully be imposed by that country upon a person who by birth is a citizen of this country, without his consent, or without his assuming the character of, or signifying by some act or declaration his will to be, a citizen of the former country. But the facts presented relieve the case before me of any difficulty of this sort. The circumstance that the said François has at different periods obtained passports from the Austrian government, and traveled under their protection as an Austrian subject, taken in connection with the length of time during which he has resided in Austria, may, I think, be viewed as a sufficient manifestation of consent on his part, at those periods especially, to be a member of that nation.

Now, there can be no question that such consent, co-operating with the law of Austria, to which reference has been made, (by which, as it would seem, children of Austrian parents born abroad are naturalized at their birth,) and accompanied, moreover, by continued residence in that country, effected a complete change in his nationality from American citizenship to Austrian citizenship. Having once acquired the latter, it cannot reasonably be maintained that his Austrian nationality, or the political obligations appertaining thereto, may be cast aside by him at pleasure so long as he continues to reside within the jurisdiction of Austria.

I have not overlooked the fact that François once obtained a passport from an American consul at Stuttgart. This is unimportant except so far as it is indicative of a preference in regard to nationality, and I consider it overbalanced by the circumstances above adverted to, and the further circumstance that from the return of his parents to Austria up to the present time his domicile or residence appears to have remained in that country.

In view of all the facts and circumstances appearing in this case, I am of the opinion that, under the provisions of the aforesaid convention, François A. Heinreich should be held by the United States to be an Austrian citizen, and treated as such; that he is not an American citizen, and consequently not entitled to protection from this Government.

I am, &c.,

GEO. H. WILLIAMS.

Hon. HAMILTON FISH,
Secretary of State.

[Telegram—Received March 22.]

*Mr. Beardsley to Mr. Fish.*ALEXANDRIA, EGYPT, *March 20, 1873.*

Leopold Ungar, born Bavarian, naturalized American 1856; passport 1857, last visé 1862; returned Europe 1861; since business various countries, including Prussia, returning often to America; according to his statement, last 1871; arrived here from Italy under assumed name and false passport; arrested by Prussians as fraudulent bankrupt; American papers found in his trunk. Dispatch from Cologne police says Ungar domiciled there since 1862; denied by Ungar, but offers no proof. Convention of 1868 relied upon; Ungar's lawyer contends same not applying, convention not retroactive, citing Savigny's International Law; claims my active assistance for Ungar's release. I believe Ungar has forfeited American citizenship, not having claimed it for eleven years, so far as his papers show. What shall I do?

Important.

BEARDSLEY.

[Telegram.]

*Mr. Fish to Mr. Beardsley.*WASHINGTON, *March 22, 1873.*

Your telegram leaves it impossible to decide whether Ungar is or is not entitled to American protection.

If an American citizen commits a crime in a foreign country and escapes thence to another foreign country, between which and that wherein the offense was committed there exists an extradition for offenses such as that charged, his citizenship does not afford ground for the American representative to do more than to see that his reclamation and extradition are properly made and conducted.

FISH.

Mr. Beardsley to Mr. Fish.

No. 76.] AGENCY AND CONSULATE-GENERAL OF THE UNITED
STATES OF AMERICA AT ALEXANDRIA, EGYPT,
Cairo, March 24, 1873. (Received April 23.)

SIR: On or about the 12th instant an individual calling himself Laurent Uferland, German by birth and Jew by faith, arrived at Alexandria from Italy, with a pass to visit Egypt, granted by the Ottoman minister at Rome. The moment he disembarked from the steamer he was arrested by orders of the Prussian consul-general, on the charge of having committed fraudulent bankruptcy at Cologne, and placed in the local prison of Moharrem Bey, a prison where only European prisoners are confined.

After he was arrested he claimed to be a naturalized citizen of the United States, and stated that his true name was Leopold Ungar, and not Laurent Uferland. His trunk, containing a large amount of jewelry and precious stones, and all his papers, were taken possession of by the

Prussian consulate, but he had managed to secrete many precious stones about his person, sewn into the lining of his coat, by the aid of which he secured the services of an English attorney.

I went to Alexandria on the 15th instant, and on the following day but one, that is to say on the 17th instant, the prisoner's attorney called upon me and informed me that a person claiming to be an American citizen was in the local prison of Moharrem Bey, having been placed there by the Prussian consulate.

The United States frigate Wabash, bearing the flag of Admiral Alden, arrived at Alexandria on the same day, (the 17th,) and all my time until the evening of the following day was occupied with the admiral. I however instructed my dragoman to visit Ungar in prison and ascertain if he had an American passport. The following evening my dragoman reported that he had visited Ungar, who informed him that all his papers, including his American passport, were in the possession of the Prussian consul-general. My dragoman had then gone to the Prussian consul-general and asked to examine Ungar's papers. He was shown the passport alluded to, as well as the false passport obtained at Rome. The American passport was dated 1857, and last viséd in 1862.

Ungar, however, assured my dragoman that if he could see me he could prove that he was not a citizen of Prussia. Having no official knowledge of Ungar's having been placed in prison by the Prussian consulate-general, and desiring to bring the case officially forward, on the morning of the 19th I caused an official note to be addressed to the director of the prison, requesting him to send to the United States consulate-general the prisoner, Leopold Ungar, claiming to be an American citizen. Of course this was a formal and perfectly regular proceeding for the purpose of obtaining an official statement from the director of the prison that Ungar was imprisoned by orders of the Prussian consul-general as a Prussian subject. On receipt of such a statement I would have immediately written to the Prussian consul-general to the effect that, having requested the release of a prisoner claiming to be an American citizen, I had been officially informed by the director of the prison that the said prisoner was confined, by his orders, as a Prussian subject, and requesting that the prisoner be publicly examined for the purpose of determining his citizenship. The letter to the director of the prison was sent by the hands of the *cawass* of the consulate-general, and I was preparing my letter to the Prussian consul-general, when, to my utter astonishment, the prisoner walked into the consulate, under a guard from the prison.

It appears that, in the absence from the prison of the director, the letter was handed to the jailer, who at once sent the prisoner to the consulate under guard. This individual appeared in the office a few minutes later, and claimed that he could not read, and had supposed the order came from the Prussian consulate. I have no doubt, however, but that the jailer was bribed by the prisoner.

I at once determined to examine Ungar in order to satisfy myself, if possible, as to his political status. Under oath he stated that he was born in Bavaria in 1831; went to California in 1849; completed his naturalization, and received his papers in 1856; obtained a passport, and returned to Europe in 1857. Since then he has been in business in various parts of Europe, principally in Cologne, where he was at one time a merchant, at another time photographer, and finally, since 1867, a member of the firm of Marius & Co., engaged in speculating in lottery-tickets. The latest visé on his passport is 1862, and he cannot

prove that he has been in the United States since 1857. Certainly he has had no legal domicile there, unless for a few months. His family, that is to say, his father and mother, live at Cologne, and he has made that his home for five years at least.

When Ungar fled from Cologne he carried with him about \$20,000 worth of precious stones and jewelry, much of which had, according to his own confession to me, been obtained by fraud. He traveled under the name of Laurent Uferland, and at Rome obtained from the Ottoman minister a pass to come to Egypt. The moment he set foot on Egyptian soil he was arrested by the Prussian consul-general, with the consent of the Egyptian authorities.

During Ungar's examination I received a letter from the director of the prison, saying that the prisoner had been released by mistake, and begging me to send him back to prison as he was responsible for him to the Prussian consul-general. You will readily perceive that the position was embarrassing. If Ungar had come to Egypt under his true name, and with his American passport, I would have protected him at all hazards, and the question would have been one of extradition. But he proclaimed his American citizenship only after he was in the hands of the Prussian authorities. In Egypt the fiction of extritoriality exists, and Ungar was virtually still on Prussian territory. When, however, he appeared in the United States consulate he was on United States soil, and if a citizen of the United States, he was theoretically entitled to all the protection of our Government. But was he a citizen of the United States? Certainly not, if the fourth article of the treaty of 1868 between the United States and Germany applied to his case. If that article only applies to those who may have become citizens of either country after the ratification of the treaty, then Ungar would be still held to be a Prussian citizen by Prussia, who, until the ratification of the said treaty, did not admit the right of her citizens to denaturalize themselves.

So long as he remained in Prussia, or under Prussian authority, he would be regarded entirely as a Prussian subject. The moment, however, he reached the United States, he would be invested with full citizenship and entitled to all its benefits. Would the fact, however, of his having reached the United States consulate-general at Alexandria, under the circumstances above described, entitle him to invoke the official power of our Government in his behalf? I think not. It might as against Prussia, but the Egyptian government, who had Ungar in charge, must be considered.

After I had examined Ungar I had an interview with the Prussian consul-general, Mr. De Jasmond, and examined all of Ungar's papers. No papers of any kind were found indicating that he had been in America since 1857. Among other documents shown me by Mr. De Jasmond was the declaration of the police authorities of Cologne that Leopold Ungar had, on the 25th of February, 1867, demanded the right of legal domicile in the city of Cologne, and that from that time until the end of the year 1872 he had his domicile and continued residence in that city.

I was satisfied in my own mind that Ungar had no claim whatever upon my official assistance, except in so far as his having accidentally reached the consulate of the United States; and I was also satisfied that on broad grounds of international justice I ought not to hold him against the demands of the Egyptian authorities. I concluded that my proper course to pursue would be to send him back to prison, protesting against his being delivered to any authority until the question of his nationality had been definitely settled. Before final action, I went on

board the Wabash and stated the case fully to the admiral, who entirely agreed with me in my view of the case and in my proposed action. I then returned to the consulate and sent Ungar back to prison with a letter to the director of the prison of the nature above indicated.

The following day, the 20th, I sent you a telegram, forwarded at 3 o'clock p. m., a copy of which I herewith inclose, (No. 1,) and yesterday, the 23d, at 2.30 p. m., your answer arrived at Alexandria, a copy of which I also inclose, (No. 2.)

On the 21st I came to Cairo with Admiral Alden and his staff, but expect to return to Alexandria the latter part of this week, when I will report any new features of Ungar's case which may arise, and forward you, if possible, evidence to prove that Ungar's domicile for five years has been at Cologne.

I am informed that our naturalized American citizens residing at Alexandria have severely criticised my action in sending Ungar back to prison after he had once reached the consulate. They argue as though Ungar was a political martyr and should be protected at all hazards. You must perceive how completely Ungar's case is divested of all political features, and how little calculated it is to arouse the sympathies of honest people.

If I have succeeded in making this case clear to you, I have to request that you will approve or disapprove of my actions. If you disapprove of them, I will consider it a favor if you will indicate in what particular I was wrong. I should add that there is no extradition treaty between Egypt and the North German Confederation, but the former is only too anxious to deliver up criminals escaping to her shores, and always affords active assistance in such cases.

I will also explain that, even had I desired to hold Ungar after he had reached the consulate, I had no prison and no police. The Egyptian prison would not have received him as my prisoner, because he had just escaped from it as a Prussian subject, and the admiral could not receive him on the flag-ship for the purpose of screening him from the just punishment of his crimes.

This case has appeared plain to me from the beginning, but all those connected with the consulate-general have counseled me to action which would have involved a serious conflict of authority, at least between the United States and the Egyptian authorities.

I am, &c.,

R. BEARDSLEY,
Agent and Consul-General.

Mr. Fish to Mr. Beardsley.

No. 55.]

DEPARTMENT OF STATE,
Washington, April 28, 1873.

SIR: Your dispatch No. 76, of the 24th ultimo, relative to the case of Leopold Ungar, has been received. In reply I have to state that, supposing him to have been duly naturalized, it is manifest, from the facts which you state, that as he has never discharged any duty of a citizen of the United States, and probably lived abroad during the whole of the late civil war, he has morally if not legally forfeited all claim to interference in his behalf by this Government.

If, however, he should be charged with an offense against Prussian law for which his extradition for trial in Prussia may be granted, as our

treaty with Prussia as well as that with Great Britain does not exempt us from surrendering even native citizens who, in such cases, may seek refuge at home, we cannot properly object to the giving up of Ungar by the government of a foreign country. Your course on the occasion is approved.

I am, &c.,

HAMILTON FISH.

Mr. Fish to Mr. Beardsley.

No. 69.]

DEPARTMENT OF STATE,
Washington, June 30, 1873.

SIR : Your dispatch No. 90, of the 30th of April last, relative to the case of Leopold Ungar, has been received. It is apprehended that your zeal to protect the supposed rights of that person as a citizen of the United States may have influenced you not to allow due weight to the fact that jurisdiction over him appears to have been claimed by the German consul-general, not alone or chiefly because he was an alleged Prussian subject, but because he was charged with the commission of a criminal offense at Cologne. As you had proof of that charge, if he had even been a native of this country this fact alone should not have led you to resist his extradition, unless there should have been ground to suppose that the charge was a mask to get possession of Ungar for a political offense.

In an elaborate letter, addressed to the chairman of the Judiciary Committee of the House of Representatives on the 24th of June, 1864, by my predecessor, Mr. Seward, the following propositions were set forth as applicable to cases arising under general international law and not regulated by treaty :

1. That "the object to be accomplished in all these cases [of extradition] is alike interesting to each government, namely, the punishment of malefactors, the common enemy of every society. While the United States affords an asylum to all whom political differences at home have driven abroad, it repels malefactors and is grateful to their government for undertaking their pursuit and relieving us from their intrusive presence."

2. That the sole elements of consideration upon which the Executive "is to determine whether or not a proposed case of extradition should or should not call forth the exercise of this power [the power of extradition] and duty under the law of nations and the precepts of humane and Christian civilization," are "the traits of the alleged criminality, as involving heinous guilt against the laws of universal morality and the safety of human society, and the gravity of the consequences which will attend the exercise of the power in question, or its refusal."

It is expected that these carefully considered views of the Department will govern and regulate the action of all its subordinates. As the United States would not desire to retain such malefactors within their borders, so they do not think it right to have the power of their name used to shield such in the territories of friendly powers, any further than may be necessary to insure to the persons accused of crime the fair preliminary hearing which may satisfy an impartial magistrate that there is just cause to believe that the accused has committed the crime with which he is charged, and which may also satisfy the representative

of the United States that the charge is not put forth for the purpose of getting possession of the person of a political offender.

Under the circumstances, your right to the copy of papers which you demanded of Mr. Jasmund may be deemed so questionable that the Department will not address to the German government a complaint for his refusal thereof.

I am, &c.,

HAMILTON FISH.

Mr. Schlözer to Mr. Fish.

IMPERIAL GERMAN LEGATION,
Washington, September 8, 1873.

The Imperial German consul-general at Alexandria, Egypt, caused in March last a certain Leopold Ungar, prosecuted by the court at Cologne for fraudulent bankruptcy, to be arrested and surrendered to the judge of first instance at Cologne.

On being arrested Ungar asserted that he was an American citizen, and, through his lawyer, Twiney, of Alexandria, asked the intervention of the American consul-general at that place.

The latter protested against his arrest on the ground that Ungar had on the 18th day of July, 1856, acquired the rights of a citizen of the United States, and that he had received an American passport in the year 1857.

This objection could not be considered valid by the German government, for the following reason: Ungar was born in Bavaria, of Prussian parents, June 10, 1831, and was consequently a Prussian subject in the year 1850, when he emigrated to America.

In the United States he did, indeed, as above remarked, acquire the right of citizenship in July, 1856, but returned to Prussia in 1862, became a permanent resident of Cologne in 1867, received at his own request a permit to reside there from the chief of police April 7, 1867, commenced business there under the name of J. C. Merges, and never gave the slightest evidence of an intention to return to America.

Under these circumstances the imperial government thought itself justified in drawing the inference, in view of article 4 of the treaty concluded February 22, 1868, with the United States, that Ungar had renounced his American citizenship.

Mr. Twiney, the lawyer, has indeed claimed that this treaty can have no retroactive force as regards Ungar, but the imperial government is unable to concur with this view of the case; for, as Germans who emigrated to America *before* the conclusion of the treaty are entitled to claim its benefits, so must this instrument have a retroactive force as regards Americans who emigrated to Germany before its conclusion.

To this is added, in the present case, the circumstance that Ungar resided in Cologne uninterruptedly for five years *after* the conclusion of the treaty. Paragraph 3 of article 4 of the treaty is, therefore, incontestably applicable to him.

At his departure from Alexandria, Ungar left six boxes (or chests) containing valuables and articles of virtu in the care of the American consul-general. These are now in the custody of Mr. Twiney.

After it had been decided that the property of Ungar should go to satisfy the claims of his creditors so far as possible, the competent Prussian court ordered the boxes aforesaid to be surrendered for this

purpose. Twiney, however, refuses to give them up, on the ground that he considers Leopold Ungar as an American citizen.

For the settlement of this matter it is therefore now a matter of necessity for the court in question to obtain an acknowledgment from the Government of the United States that Leopold Ungar is a German subject.

In obedience to instructions received from his government, the undersigned, imperial German envoy, has the honor most respectfully to request the honorable Hamilton Fish, Secretary of State of the United States, to examine this case, and, if he shall concur with the view of the German government, to send to the legation a recognition of Leopold Ungar as a German subject.

The undersigned begs the honorable Secretary of State, at the same time, in case such recognition shall be sent, to be pleased to inform the American consul-general at Alexandria accordingly.

The undersigned is happy to avail himself of this occasion to renew to the honorable Secretary of State the assurances of his most distinguished consideration.

SCHLÖZER.

Mr. Fish to Mr. Schlözer.

DEPARTMENT OF STATE,

Washington, September 12, 1873.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Schlozer, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of Germany, requesting that the consul-general of the United States at Alexandria, in Egypt, may be instructed to surrender certain packages supposed to contain valuables, which packages are said to be in the possession of one Twiney, an attorney of Leopold Ungar, the reputed owner of the valuables. With a view to show the reasonableness of this request, Mr. Schlözer sets forth certain antecedents of the said Ungar, and calls upon this Government to decide accordingly that he is not a citizen of the United States.

In reply the undersigned has the honor to state that the Mr. Twiney referred to is quite unknown to this Department, though a person of that name has been mentioned in communications from the consul-general of the United States at Alexandria, as an Englishman and the attorney of Ungar there. Even, however, if he were a citizen of the United States, there is no authority here to compel him to surrender property in his possession as requested by Mr. Schlözer. If German subjects claim such property, such claim must be asserted before the customary authority at Alexandria, which, it is presumed, will decide the case pursuant to law.

It is supposed that the national character of Leopold Ungar has nothing to do with the question involved. Even, however, if it were otherwise, this is more properly a judicial question, which it is believed it is not competent for executive authority definitively to decide.

Accept a renewed assurance of my very high consideration.

HAMILTON FISH.

Mr. Schlözer to Mr. Fish.

GERMAN LEGATION,
Washington, September 15, 1873. (Received Sept. 17.)

SIR: I have the honor to acknowledge the receipt of your kind note of the 12th instant, in reply to my own of the 8th, concerning the matter of Leopold Ungar.

If I take the liberty to return once more to the same subject I do so for the following reasons:

By your note it would seem that I requested "that the consul-general of the United States at Alexandria may be instructed to surrender certain packages which are said to be in the possession of one Twiney."

Your note, moreover, points out that "there is no authority here to compel him (Twiney) to surrender property in his possession, as requested by Mr. Schlozer."

I here must allow myself to state that I have received no instructions whatever from my government to make either of the above requests, and on a reperusal of my note I cannot find there anything in allusion to such prayers.

The object of my note was the following:

Ungar has left in Alexandria certain packages in the possession of Twiney. These packages are demanded by the tribunal at Cologne. Twiney refuses to surrender the packages, because he pretends that Ungar is an American citizen.

The German government holds that in consequence of the treaty of 1868, Ungar is a Prussian citizen.

This opinion is not adopted by Twiney nor by the United States consul-general at Alexandria. Hence, the German government wishes to have the decision by the United States government about this question of nationality, and I did allow myself to beg you for such a decision, believing that the United States Department of State, which has made the treaty, would be the competent authority to give the decision.

In case your opinion should coincide with that of my government, I requested, moreover, that you would kindly communicate the fact (*i. e.* your opinion on Ungar's Prussian nationality) to the United States consul-general at Alexandria.

Your note, however, states in conclusion, that the Executive authority is not competent to decide this matter of nationality, but that it more properly is a judicial question.

Under these circumstances, I beg your permission to request that you would have the kindness to point out to me the way in which to meet the demand of my government, or to kindly procure for me—if it should be possible—the opinion of the United States Attorney-General upon the subject in question.

Accept, sir, the renewed assurances of my highest consideration.

SCHLÖZER.

Mr. Davis to Mr. Schlözer.

DEPARTMENT OF STATE,
Washington, September 18, 1873.

SIR: Your note of the 15th instant, relative to the case of Leopold Ungar, has been received. It seemed so obvious that the main purpose of your previous note, of the 8th instant, was to obtain possession of

the valuables in the possession of one Twiney, the English lawyer, that the Department deemed itself justified in assuming that you wished the consul-general of the United States at Alexandria to be instructed to cause the valuables to be surrendered, especially as Twiney was said to hold them subject to his order. It seems, however, that your principal object was to induce this Department to decide that Ungar is not a citizen of the United States. In reply, I again have to express my regret that it is not deemed either expedient or competent to make any such decision in such case. This, however, does not arise from any disposition to deprive German subjects of their rights to the valuables adverted to. The consul-general of the United States at Alexandria will consequently be directed not to allow any control which he may have over those articles as the property of a countryman to interfere with the just claims of others thereto.

Accept, sir, a renewed assurance of my very high consideration.

J. C. B. DAVIS.

Mr. Davis to Mr. Hoar.

DEPARTMENT OF STATE,
Washington, May 11, 1869.

SIR: I am instructed by the Secretary of State to ask your opinion in the following case:

Applications are made in behalf of five persons in the island of Curaçoa for passports. They were all born in that island except one, who was born in Saint Thomas. All are over twenty-one except one, who is a youth of fifteen. Four of them are children of a native citizen of the United States of America, domiciled at Curaçoa, who would appear not to have resided in this country since 1841. The other is the son of a native citizen whose residence is not stated. It does not appear affirmatively that any of the applicants have resided or intend to reside in the United States, or that more than one of them has ever been in this country.

The act of 1855 (10 U. S. Statutes, p. 604) provides that "persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers never were citizens of the United States."

It is provided by chapter 127 of the laws of 1856, (11 U. S. Statutes, p. 60,) that passports shall not be "granted or issued to or verified for any other persons than citizens of the United States."

This Department desires to know whether these applicants are citizens of the United States, and, as such, whether they are entitled to passports.

I have the honor to be, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

Hon. E. ROCKWOOD HOAR,
Attorney-General.

Mr. Hoar to Mr. Fish.

ATTORNEY-GENERAL'S OFFICE,

June 12, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of May 11, 1869, in which you ask my opinion whether five persons residing in the island of Curaçoa, for whom application is made for passports, are citizens of the United States, and entitled, as such, to have passports issued to them. You state that four of them are over twenty-one years of age, and that one is a youth of fifteen; that four of them were born in that island and one was born in Saint Thomas; that four of them are children of native citizens of the United States domiciled at Curaçoa, who would appear not to have resided in this country since 1841, and the other the son of a native citizen whose residence is not stated; and that it does not appear affirmatively that any of the applicants have resided or intended to reside in the United States, or that more than one of them has ever been in this country.

I do not think that either of these facts is material to the question of their citizenship, except the fact that their fathers were, at the time of their birth, citizens of the United States. That fact being established, the children, under and by virtue of the act of Congress of February 10, 1855, chap. 71, (10 Stat., 604,) are deemed and considered and are thereby declared to be citizens of the United States, "*Provided, however, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.*" If, therefore, the fathers of the applicants, at the time of their birth, were citizens of the United States, and had at some time resided within the United States, it is my opinion that the applicants are citizens of the United States under the provisions of the statute, and entitled to all the privileges of citizenship which it is in the power of the United States Government to confer. Within the sovereignty and jurisdiction of this nation they are undoubtedly entitled to all the privileges of citizens.

In regard to the other branch of your inquiry, whether they are entitled, as such, to passports, my answer must be more qualified. I understand a passport to be a certificate of citizenship, and that a person receiving it is certified to be entitled to such protection as the Government can give to its citizens in foreign countries. But while the United States may, by law, fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it is clear that the United States cannot, by undertaking to confer the rights of citizenship upon the subjects of a foreign nation who have not come within our territory, interfere with the just rights of such nation to the government and control of its own subjects. If, therefore, by the laws of the country of their birth, children of American citizens, born in that country, are subjects of its government, I do not think that it is competent to the United States, by any legislation, to interfere with that relation, or by undertaking to extend to them the rights of citizens of this country, to interfere with the allegiance which they may owe to the country of their birth, while they continue within its territory, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist. The rule of the common law I understand to be that a person "born in a strange country under the obedience of a strange prince or country is an alien," (Co. Litt., 128 b,) and that every person owes allegiance to the country of his

birth. I have no means of ascertaining what the law of Curaçoa may be in this respect. But if the applicants can receive any passport from your Department, it would seem that it must be a qualified one, which should state that although they were citizens of the United States, they were only so in the qualified sense which I have indicated, reserving such rights, obligations, and duties as might attach to them under the laws of the country in which they live and in which they were born, over which the United States could have no control while their domicile continued, nor until they should come within our territorial jurisdiction.

I do not understand that the granting of passports from your Department is obligatory in any case, but is only permitted where it is not prohibited by law. Whether according to the practice of your Department, passports are ever issued with any exceptions or limitations attached to them, I do not know; but in the strict and general sense of the language of your question, I am of opinion that the applicants are not entitled to passports.

I have the honor to be, &c.,

E. R. HOAR.

Mr. Hall to Mr. Davis.

No. 107.]

UNITED STATES CONSULATE,
Matanzas, February 22, 1870. Received March 3.

SIR: I have the honor to submit to the Department a copy of a letter just received from Mr. Felix Govin y Pinto, resident in New York, inclosing a document drawn up and signed by him before Mr. Thomas Ritter, a notary public of said city, by which the said Govin manumits five negresses, and which he desires me to present to a notary public of this place to be recorded.

I have returned to Mr. Govin the inclosure referred to, in a letter under date of yesterday, a copy of which I also accompany herewith.

My reasons for declining to act in the premises are the following: That by a decree of the captain-general of the island, which was published in the *Aurora del Zumuri*, a newspaper of this city, on the 3d instant, the property of said gentleman was laid under embargo.

The document alluded to bears date the 7th instant, at which time Mr. Govin had lost the power of alienating his property, either by sale or emancipation. Mr. Govin justifies his application to this consulate on the ground of his being an American citizen. There is no evidence here of his being such citizen, and even if he be one, his residence in the United States and the peculiar and international character of the case would seem to require his communicating first with the Department rather than with one of its foreign agencies.

Another and strong reason why I have declined to take any action whatever is that I suspect the whole matter was intended to create complications between the government of Spain and that of the United States, and I am unwilling to allow this consulate to be made use of for sinister purposes.

I trust that my course will be approved.

I have, &c.,

W. O. PARKINSON,
Vice-Consul.

HAVANA, *February 22, 1870.*

SIR: Mr. Felix Govin y Pinto, up to within a few months, has been a practicing lawyer at Matamoras, of which place he is a native, and where he has his permanent residence. When and how he became a citizen of the United States is not known to me or to the authorities of the island.

The course pursued by the vice-consul at Matamoras is by my direction. If not approved, the Department will please return the inclosed letter, addressed to Mr. Govin, with such instructions as it may deem proper.

HENRY C. HALL,
Consul.

[Translation.]

NEW YORK, *February 10, 1870.*

DEAR SIR: Although I have not the honor of your personal acquaintance, I am aware of your characteristic courtesy, and therefore trust that you will be pleased to deliver the inclosed document to a notary public, in order that it may be duly recorded (*pioto colizado.*) For expenses incurred, be pleased to draw at sight upon me at No. 109 Water street.

I pray that you will pardon the trouble which, in virtue of his being an American citizen, is caused by your obedient humble servant,

FELIX GOVIN Y PINTO.

The UNITED STATES VICE-CONSUL, *Matamoras.*

Reply.

UNITED STATES CONSULATE,
Matamoras, February 21, 1870.

DEAR SIR: I beg to own receipt of your communication of 10th instant, inclosing to me a document, whereby freedom is granted to five of your negresses, which document you desire me to present to one of the notaries public of this city to be recorded.

In reply I would state that, in view of the embargo lately laid upon your property by the superior government of the island, this consulate can take no action in the premises without specific instructions from the Department of State. Should the document be transmitted through the medium of the Department, this consulate will act according to directions which may be given.

I therefore return the inclosure, regretting that I cannot assist you in accomplishing your philanthropic intention.

Your obedient servant,

W. O. PARKINSON,
Vice-Consul.

Mr. FELIX GOVIN Y PINTO,
No. 109 Water Street, New York.

Mr. Davis to Mr. Fox.

No. 49.]

DEPARTMENT OF STATE,
Washington, May 12, 1869.

SIR: Your dispatch No. 5, inclosing copies of a correspondence between yourself and the governor of Trinidad de Cuba, relative to the arrest and detention of four certain persons, all of Spanish origin, who (you claimed) were entitled to your official intervention, has been received.

It appears that in April last José M. Valdespino, Rafael Vingut, Gabriel Suarez del Villar, and Francisco de Graragorri were arrested

by order of the authorities at Trinidad de Cuba; that you interfered in their behalf, asking for the motives of "their arrest," claiming, as vice-consul of the United States, that they were American citizens; that correspondence in regard to this claim ensued, in the course of which you forwarded to the governor copies of the naturalization papers of each of these gentlemen; that the governor replied to this that he had examined the papers forwarded by you, and it appeared that only Mr. Saurez del Villar was a naturalized citizen of the United States, and that each of the other gentlemen had only declared his intention to become such citizen; that the governor thereupon conceded that Mr. Suarez del Villar was entitled to the prerogatives of United States citizenship, unless he had broken the laws of Cuba, or had renounced his adopted citizenship; and that as to the three other persons, the governor demanded to know whether you still claimed for them the rights of citizens of the United States; that you replied, re-asserting the right of these gentlemen to your official intervention and protection, (referring to the case of Martin Koszta,) and further saying that the case was submitted to your Government, and you must abide by its decision; and that the governor replied, re-asserting his position, and denying the applicability of the Koszta precedent.

In reply, now, to your dispatch, I have to say that your action touching Mr. Suarez del Villar is approved, and that your action in regard to the other gentlemen named in the correspondence is not approved.

The late distinguished Secretary of State, Mr. Marcy, was very careful in his elaborate letter concerning the case of Martin Koszta not to commit this Government to the obligation or to the propriety of using the force of the nation for the protection of foreign-born persons who, after declaring their intention to become at some future time citizens of the United States, leave its shores to return to their native country. He showed clearly that Koszta had been expatriated by Austria, and required to reside outside her jurisdiction; that at the time of his seizure he was not on Austrian soil, or where Austria could claim him by treaty stipulations; that the seizure was an act of lawless violence, which every law-abiding man was entitled to resist; and he took especial care to insist that the case was to be judged, not by the municipal laws of the United States, not by the local laws of Turkey, not by the conventions between Turkey and Austria, but by the great principles of international law. It is true that in the concluding part of that masterly dispatch he did say that a nation might at its pleasure clothe with the rights of its nationality persons not citizens, who were permanently domiciled in its borders. But it will be observed by the careful reader of that letter that this position is supplemental merely to the main line of the great argument, and that the Secretary rests the right of the Government to clothe the individual with the attributes of nationality, not upon the declaration of intention to become a citizen, but upon the permanent domicile of the foreigner within the country.

To extend this principle beyond the careful limitation put upon it by Secretary Marcy would be dangerous to the peace of the country. It has been repeatedly decided by this Department that the declaration of intention to become a citizen does not, in the absence of treaty stipulations, so clothe the individual with the nationality of this country as to enable him to return to his native land without being necessarily subject to all the laws thereof.

In the present unhappy state of things in Cuba the Secretary of State can see no reason for departing from so well established and so wise a rule. He sees with horror the barbarous proclamations of the Spanish

authorities, and hears with regret of the great destruction of property caused by the civil war. He earnestly exhorts you, and all other consuls of the United States, to spare no efforts to protect the lives, the property and the rights of American citizens in this emergency, and he will see with satisfaction any unofficial efforts you may make to shield the persons of those who have declared their intentions to become citizens from the barbarities of the Spanish volunteers, but he desires me to direct you hereafter in your official action to observe the rule laid down for your guidance in this instruction.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

HORATIO FOX, Esq.,
U. S. Consul, Trinidad de Cuba.

Mr. Fish to Mr. Boker.

No. 15.]

DEPARTMENT OF STATE,
Washington, April 19, 1872.

SIR: The dispatch without number addressed to this Department by Mr. Brown, chargé d'affaires at Constantinople, under date of 29th of February, has been received.

It acknowledges the receipt of the Circular Instruction No. 16, on the subject of passports and citizenship.

Mr. Brown reports the case of Mr. Joseph Paul Hamson, who is said to be in possession of a passport, issued by the legation at London, in 1858, which is not accepted by the legation at Constantinople, because Mr. Hamson has not papers of naturalization. It is desirable that a more exact report should be made to this Department of the facts in this case.

Mr. Brown next mentions the case of Mr. Gunster, who, he states, is not a native of the United States, nor of American parentage, and has never been in the United States. Under circumstances thus described, Mr. Gunster, of course, cannot be recognized as a citizen of the United States. It is understood from your dispatch No. 3, under date of 12th March, that he has absconded.

Mr. Brown next mentions the case of Mr. Aristahis Azarian. Record has been found in this Department of the passport, No. 6696, issued to him under date of 6th January, 1855. If, however, Mr. Azarian is an Ottoman subject by birth, and has made his domicile of late years in Constantinople, his case would appear to come within the rules of the circular from the Department of October 14, 1869.

Mr. Brown next mentions the case of Mr. James Azarian. Record of the passport, said to have been issued to him by this Department, has not been found, but as the date and number are not mentioned in Mr. Brown's dispatch, it is quite possible that such a passport may have been issued at some time. The case appears to be governed by the rule just now mentioned for the case of Mr. Aristahis Azarian.

In withdrawing from these persons, or either of them, recognition of their American citizenship, you will be careful to give them due notice, so that they need suffer no unnecessary inconvenience.

I am, &c.,

HAMILTON FISH.

Mr. Boker to Mr. Fish.

No. 18.]

LEGATION OF THE UNITED STATES,
Constantinople, May 12, 1872. (Received June 3.)

I have the honor to acknowledge the receipt from the Department of State of dispatches numbers 15, 16, and 17. I shall carefully follow the instructions as to the course to be pursued toward certain pretended citizens of the United States residing in Constantinople, indicated in dispatch No. 15.

From all the testimony which I can gather, Mr. Joseph Paul Hamson, although in possession of a passport issued at London in 1855, has not really the slightest claim, beyond that established by the passport, of being considered an American citizen.

Mr. Brown's report as to Mr. J. F. Gunster is correct. Mr. Gunster is an Austrian Jew by birth, and he has never set his foot upon the territory of the United States. As you suppose, he is the absconding jailer mentioned in my dispatch No. 3. We shall probably never again hear of him.

Shortly after my arrival here Mr. Aristahis Azarian presented himself to me, exhibited his old passport from the Department of State, and requested me to issue a new passport to him. Knowing that there had been a question as to his right of citizenship in the United States, which my predecessor, Mr. Morris, had refused to acknowledge, I questioned Mr. Azarian closely, and he professed to be able to obtain copies of his naturalization papers from the United States, and pledged his word to produce them within a reasonable time. Pending that production, to the time allowed for which I have placed a limit, I instructed the consul-general to protect Mr. Azarian as fully as though his claim were established. I hope that Mr. Azarian may prove his right to citizenship of the United States, for he is a very useful man to this legation, sitting, as he always willingly does, as judge in the *tidjaret* or mixed court, in American cases, and therein displaying marked ability. We could more readily dispense with many a man of undoubted citizenship, in the American colony, than with the valuable services of Mr. Aristahis Azarian. In addition to the claim advanced by the two Azarians, Aristahis and James, a third brother, Mr. Joseph Azarian, is undoubtedly a citizen of the United States. He resides in the city of Boston almost altogether, where he and his two brothers have, in conjunction, an important commercial house. On the whole, this Azarian affair is pretty well mixed up, after the usual Levantine fashion, and whether Aristahis and James can emerge from it as American citizens remains to be seen. I understand that there was no suspicion of the claim of the brothers Azarian to American citizenship until, at the death of their father, a few years ago, when they got into a triangular fight over the property of the deceased, and one brother denounced the others to the minister, the consul, and to everybody who would listen to him, *more Turcico*. Now that peace has been made among them, the protesting brother would fain return his family to our fold, *more Turcico* once more.

The passport of James Azarian I shall endeavor to find. It is said to be among the papers of the late Mr. Brown.

I have, &c.,

GEO. H. BOKER.

Mr. Smithers to Mr. Hunter.

No. 160.]

UNITED STATES CONSULATE,
Smyrna, October 19, 1872. (Received November 12.)

SIR: I have the honor to acknowledge the receipt of dispatch No. 69 of the Department, dated September 14, in reply to mine of August 17, 1872, relative to the case of Hubert P. M. Reggio.

My refusal to register Mr. Reggio as a citizen of the United States, upon the presentation of a citizen's passport, was based upon the knowledge that for six or seven years past he had been domiciled at Smyrna, carrying on the business of a merchant. It was also known to me that before leaving for the United States, in May last, Mr. Reggio produced at this consulate an Italian passport, for the purpose of having it viséd, and was informed by the clerk that this formality was unnecessary unless he specially desired it.

It seemed to me, therefore, that the naturalization certificate of Mr. Reggio must have been improperly obtained, and that it was my duty to refer the case to the Department for its investigation and instruction.

Upon receipt of the Hon. C. Hale's dispatch, above referred to, informing me that the passport of Mr. Reggio was believed to have been duly issued upon proof of his naturalization, June 14, 1872, in the circuit court of the United States at Boston, I immediately addressed a letter to Mr. Reggio, copy of which, marked No. 1, is herewith inclosed, inviting him to appear before me and make answer to the interrogatories therein contained. I herewith inclose copy of his written reply, marked No. 2.

This evidence confirms the verbal statement previously made to me by Mr. Reggio, namely, that at the time of his first arrival in the United States he was a minor; that his declaration of intention was made during his minority; that he left the United States before he reached his majority, to return to Smyrna, with the evident intention of permanently locating there, and that he resided here till May last, when he went to the United States, and obtained his naturalization and the passport above referred to.

In view of the requirements of the acts of Congress regarding the naturalization of aliens, as well as the instructions contained in paragraphs 110 and 111 of the Consular Regulations, I respectfully submit to the Department whether Hubert P. M. Reggio is entitled to registration by me as a naturalized citizen of the United States.

I have, &c.,

E. J. SMITHERS,
United States Consul.

[Inclosure.]

Mr. Smithers to Mr. Reggio.

UNITED STATES CONSULATE,
Smyrna, October 15, 1872.

SIR: With a view of ascertaining whether or not you are entitled to protection of this consulate, as a naturalized citizen of the United States, I have to ask that you will appear at this consulate on or before Thursday next to reply to the following interrogatories, viz:

1. What is your age?
2. Where were you born, and what was the nationality of your parents?
3. Where did you reside before going to the United States?
4. When did you first arrive in the United States?

5. When did you leave the United States for the first time and return to Smyrna?
6. How long have you been residing at Smyrna since your return, and under what protection have you been?
7. When did you establish your firm of Reggio & Belhomme?
8. When did you go to the United States and obtain your naturalization?

I am, &c.,

E. J. SMITHERS,
United States Consul.

[Inclosure.]

Mr. Reggio to Mr. Smithers.

SIR: I have duly received your honored note of the 15th instant, and beg to say, in reply, that some family interests calling me away from town, I am unable to appear at the consulate on Thursday next.

I will endeavor to answer the several questions you wish me to to the best of my recollection.

I am twenty-seven years old.

I was born in Smyrna, and my parents, who were likewise born in the same city, were under the Sardinian protection.

Before going to the United States I resided in Smyrna.

I first arrived in the United States in the year 1862, (or 1863,) and took my first naturalization papers.

I first left the United States for Smyrna at the end of 1866.

I have been residing in Smyrna ever since.

I carry on business under the French protection, my partner being a Frenchman, and all my interests have been protected up to this day by the French consulate. When I last left Smyrna for the United States I was compelled to take an Italian passport.

The firm of Reggio and Belhomme was established on the 1st day of December, 1866.

I went to the United States and obtained my first papers of naturalization in May or June last.

I remain, &c.,

HUBERT P. M. REGGIO.

REPORT OF THE EXAMINER OF CLAIMS IN THE CASE OF KINDINICO.

BUREAU OF CLAIMS, *May 13, 1873.*

Subject: The brothers Kindinico in Egypt, judgment of Visetti against them. Mr. Beardsley's No. 78, asking instructions on the subject.

For the purposes of the question now involved it is not deemed necessary to examine the official correspondence between the Department and the consul-general at Alexandria further back than Mr. Hale's No. 133, of October 22, 1868. In that dispatch Mr. Hale informs the Department:

I. That one Trubro (an Ottoman subject) called at the consulate as the attorney of the Kindinicos with the information that George N. Kindinico had, on the 3d of July, 1868, received his final naturalization papers in the supreme court of the city of New York, and had, on the 29th of the same month, obtained from this Department a passport, No. 38,456. He desired the consul to transmit to the local authorities a claim of Geo. Kindinico against a native subject. Mr. Hale declined to do so, advised the Department of his action, and also states that the claim now presented is one of a large number of similar claims awaiting recognition by the American consulate.

II. In its No. 65, of the 29th December, 1868, the Department, in answer to the above dispatch, speaking of the particular claim, says: "Upon the face of the papers these would appear to be merely private claims, not involving any controversy with the government of Egypt. If this

be so, the circumstance of the Kindinicos not being personally present in Egypt is no reason for withholding the assistance," and instructs him to ascertain whether the claims are merely private or partake of a political character, and to report for further instruction, and also advises the consul that Thos. Kindinico was furnished with a new passport on the 20th of August, 1868.

III. On the 29th of January, 1869, Mr. Hale, in his No. 143, informs the Department that the claims are of a private character, enters into a detailed history of the Kindinico matters, referring especially to a previous instruction of the Department in 1864, wherein it denounced the claims of the Kindinicos to American citizenship as groundless and fraudulent. In this dispatch the consul furnishes an index to all the official correspondence on the subject between the Department and the consulate.

IV. The Department on the 1st of April, 1869, in instruction 67, replying to the above dispatch, says: "The Messrs. Kindinico have been naturalized as citizens of the United States, and will receive the ordinary recognition due to that character;" adding, "This recognition and protection, however, are not to relate back to proceedings antecedent to the naturalization of those persons respectively, nor to any controversies in which they have been or may be involved with the Government, in respect to which the instructions heretofore given you are confirmed." It further instructs the consul to exact from the Kindinicos in all transactions with the local government on their behalf such security for costs as will indemnify the consulate against loss or liability.

The above instruction seems to indicate very clearly the views of the Department as to the non-retroactive character of the act of naturalization.

V. On the 12th of March, 1870, Mr. Hale, in his No. 198, informs the Department that he has received a paper from the consulate-general of Italy, stating that G. B. Visetti, an Italian subject, had, in 1859, recovered, in the court of the consul-general of Austria, (of which country the Kindinicos were then subjects,) a judgment against the brothers Kindinico for \$8,000; that certain real estate in Alexandria, owned by the Kindinicos, had been set apart by the court for its payment, but the judgments had never been carried into effect; that neither the Austrian nor American consulate recognized the Kindinicos as citizens of their respective countries; that the Egyptian government had announced by circular that the Kindinicos would not be recognized as other than Ottoman subjects, no matter what their naturalization.

The Italian consul sends a copy to Austrian and American consulates, and also to local government. Mr. Hale files it and reports to Department.

VI. This dispatch is acknowledged on the 18th of April, 1870, instruction No. 87, and the hope expressed, that the adoption of the new system of judicial reforms in Egypt will relieve the consulate from further annoyance in relation to the affairs of the Kindinicos.

VII. In the dispatch now before me, (78, from Mr. Beardsly,) he says Mr. Butler interfered in behalf of the Kindinicos; no mention of it in Mr. Butler's dispatches. Mr. Beardsly now wishes instruction as to his duty in the premises, and asks, in case the question of the execution of the judgment, either by the Austrian consul or the local authorities, seeking to execute, he should interfere to prevent its execution on the ground that the Kindinicos are now citizens of the United States, or whether, on the other hand, if appealed to by the Austrian or Italian consul, he should aid in the enforcement of the judgment.

CONCLUSION.

It is, in my opinion, no part of the duty of the United States consul to interfere either to prevent the execution of the judgment or to aid in its enforcement. As to the United States and their courts, it stands in the relation of a foreign judgment, obtained in the courts of a friendly power, the court having jurisdiction of the person and the subject-matter. As such the judgment is entitled to the highest respect. It was long a question of debate in England whether foreign judgments should be held conclusive, or whether their merits might not be inquired into when they were sued on in English courts. In a case cited in Story's Conflict of Laws (§ 604) Lord Nottingham is reported in these words:

We know not the laws of Savoy; so, if we did, we have no power to judge them, and therefore it is against the law of nations not to give credit to the sentences of foreign countries till they are reversed by the law and according to the form of those countries where they were given. For what right hath our kingdom to reverse the judgment of another, and how can we refuse to let a sentence take place until it be reversed? And what confusion would follow in Christendom if they should serve us so abroad and give no credit to our sentences?

And Lord Hardwicke, quoted in the same connection, says:

Where any court, foreign or domestic, that has the proper jurisdiction of the case makes the determination, it is conclusive to all other courts. (*Ibid.*)

Visetti might take a transcript of that judgment and sue the Kindinicos in the United States consulate, and there get another judgment, which he could then ask our consul to enforce; so, if he wished to collect it in New York, or elsewhere in the United States, he would have to sue on the judgment and obtain a judgment in our courts, but as to its execution by the subjection of the property upon which it was made a lien at the time of its rendition, it stands to the United States consulate in Egypt and to the United States precisely as if it were being enforced in Austria or any other foreign country; and the same rule holds as, I think, if the Austrian consulate or the local authorities seek to enforce the judgment in any other way, within the limitations of civilized usage and the law of nations. On the principles above stated the United States consul cannot be called upon to give any aid to the plaintiff, to the Italian consul, the Austrian consul, or anybody else, in enforcing it. It is not a judgment of his court, nor of the courts of his nation. Mr. Kindinico cannot claim to be in any better position than if he had left Austria, came to the United States, took up his residence here, and become naturalized, leaving a judgment behind in Austria against him which was being enforced against his property in Austria. This is just his relation to the American consulate-general in Egypt.

Respectfully submitted.

HENRY O'CONNOR.

PART VI.—CORRESPONDENCE BETWEEN GREAT BRITAIN AND OTHER COUNTRIES.

It would be manifestly impossible to give an abstract in this memorandum of all the correspondence which has taken place between Great Britain and other countries, as as the preliminary search through the official registers and manuscript volumes, even if the inquiry were restricted to the last thirty years, would probably occupy several weeks, if not months.

There are, however, certain standard cases which are frequently referred to as precedents, and which are consequently more readily accessible.

An effort will be made to give a *résumé* of these, as well as to examine cursorily the correspondence of the last few years.

The principal subject of correspondence has been the claim to British protection of the sons and grandsons of British subjects born in foreign countries.

By the act 4 Geo. II, cap. 21, (explaining 7 Anne, cap. 5,) all children of natural-born British subjects, born out of the ligeance of the Crown of England, are "adjudged and taken to be, and all such children are hereby declared to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever." (Statutes at Large, vol. v, p. 113.)

The act 13 George III, cap. 21, extended the provisions of this statute to the grandchildren of native British subjects. (*Vide ante*, "Laws of Great Britain.")

On the other hand, as previously explained, the common law of England considers all persons born within British territory to be British subjects, without regard to their parentage.

A conflict, hence, arises between the principle of the British doctrine of native allegiance and the statutory enactments extending that allegiance to the sons and grandsons of British subjects born within the ligeance of other countries.

Such persons, finding that they are declared by statute to be subjects of the British sovereign, naturally look to that sovereign for protection in return.

The manner in which this claim is practically dealt with is shown by the following instructions to Consul Dale, of the 20th December, 1842, based upon an opinion delivered by Her Majesty's advocate-general, and which forms the model on which all subsequent instructions to Her Majesty's representatives or consuls abroad, upon this subject have been framed:

By the statute law of this country, all children born out of the allegiance of the King, whose fathers, or grandfathers by the father's side, were natural-born subjects, are themselves deemed to be natural-born subjects, and are, therefore, entitled to enjoy British rights and privileges while they are within British territory; but the effect of British statute law cannot extend so far as to take away from the government of the country in which those persons may have been born the right to claim them as natural-born subjects, at least so long as they remain in that country.

By the common law of England, all persons born within the King's allegiance, whether the children of British subjects or of foreigners, are deemed to be natural-born subjects of the Crown of England, and if the law of any foreign state be the same, by equally admitting to its rights as subjects persons born within its own territory, that country has the right to exact the service of a subject from such person, even if he be the child of a foreigner, at least while such child remains in the country of his birth.

Therefore the children or grandchildren, by the father's side, of natural-born British subjects born in any other country than Montevideo are entitled to be protected in that country as natural-born subjects of the Crown of Great Britain. But as regards the children of British fathers born in Montevideo, such children cannot be protected against the operations of the laws affecting the subjects of that country, unless the laws of that country do not admit the child of a foreigner to the rights of a subject.

ARGENTINE REPUBLIC—BUENOS AYRES.¹

The struggle between Montevideo (Argentine Republic) and Buenos Ayres led to a variety of questions respecting the position of British subjects in the countries bordering on the River Plate.¹

In reply to an inquiry from Mr. Ewart in the House of Commons on the 4th of April, 1845, Sir Robert Peel stated: "It appeared that the general law was this: That the son or grandson of a British subject born abroad was also a British subject. But he could not deny that children born in a foreign state were not also subjects of that state. Such was the law in this country; for the children of foreigners born in Her Majesty's dominions were British subjects. If the children of British residents at Buenos Ayres were born out of that state, the authorities there had no right to make them Buenos Ayrean subjects. If, however, the children of British subjects were born at Buenos Ayres and continued to reside there, they obtained the rights of citizenship in that place; but with those rights they also had imposed upon them the burdens and duties of citizens, and were liable to the law of Buenos Ayres."

In December, 1850, Mr. Hood, Her Majesty's consul at Buenos Ayres, requested instructions respecting the renewal of certificates of British nationality to natives of Hanover, and to British subjects who, from their occupation or business, were compelled by the local enactments to wear the red waistcoat, hat-band, and ribbon, distinctive of Buenos Ayrean nationality.²

¹ Hansard, vol. lxxix, p. 177. ² MS. volume Nationality Cases. Mr. Hood, No. 48; December 16, 1850. To Mr. Hood, No. 7; March 24, 1851.

Lord Palmerston replied, "that if there is a Hanoverian minister or consul at Buenos Ayres he should, of course, take charge of Hanoverian subjects; but if there is no such officer, then Hanoverian subjects may still continue to remain under British protection, but it does not appear to me to be necessary that fresh certificates of British nationality should be granted to such Hanoverians.

"I have further to state to you that a subject of Her Majesty cannot divest himself of his allegiance by submitting to any local enactment compelling him to wear any particular uniform or badge in a foreign country in which he may think proper to reside, and that he does not thereby forfeit his right to be protected by his own government."

In October, 1857, Mr. Christie reported that the Argentine national Congress had passed a law enabling the sons of aliens born within Argentine territory to choose between Argentine citizenship and that of their fathers.¹

Mr. Christie added that he had advised the Buenos Ayrean government, who were forcing the sons of aliens into service, to make a similar law.

At the close of 1857 a large number of British residents at Buenos Ayres having addressed a memorial to the British government complaining of the forced enlistment of the sons of foreigners in the local militia, Lord Palmerston wrote a dispatch to Mr. Christie acknowledging that Her Majesty's government could not claim such persons as British subjects; but, pointing out the various reasons which could be urged, both on grounds of policy and comity, against such a rigid exercise of military law.²

This dispatch is too long for insertion here, but it well deserves attention in case of an occasion arising in which similar arguments might be called for.

The result of this representation was that the government of Buenos Ayres issued a decree on the 12th of April, 1858.³ "The government has resolved to admit substitutes for all the acts of the service of the national guard on the part of the sons of foreigners born in the country, (and who, by our laws, are citizens of it,) who may wish to have them, subject to the regulations which may be necessary and conducive to the good service of the same, it being understood that the substitutes must be foreigners and that their principals will remain subject to all responsibility consequent on all culpable default in the service."

Some communications took place from 1854 to 1857 between the English and French governments as to the rights of the sons of aliens born in Buenos Ayres to the protection of the country of their fathers' birth.

In November, 1857, Count Walewski informed Lord Cowley that the French consuls had been instructed to contend that the sons of Frenchmen so situated were entitled to French protection, but that he had carefully considered the whole subject, and "that he must confess he considered the claim untenable.⁴ The claim had been originally put forward under the tenth article of the first book of the Code Napoléon, which declares 'que tout enfant né d'un Français en pays étranger est Français,' and had always been insisted on until now. On the other hand, his excellency found that by the seventeenth article of the same book and code it is declared, 'que la qualité de Français se perdra par tout établissement fait en pays étranger sans esprit de retour.' There was therefore an apparent contradiction in the code itself, to remedy which the interference of the legislature would probably be required."

At a subsequent interview Lord Cowley urged Count Walewski to send to the French consuls the same instructions as had been sent to Mr. Christie.⁵ The count replied, "that at this moment he was not in a position to send any instructions whatever upon the subject, for that he was still under the pressure of the interpretation put by former governments on the law of France. In stating to me, as he had done some time back, that he considered the position until now taken by France on this question to be untenable, he had only given his own private opinion—an opinion, indeed, which he had expressed officially in council; and he had asked me for the English practice in cases of this nature with the intention of employing it as a further argument with the minister of justice for the necessity of changing the terms of the French law. Until this, however, should be accomplished, he had no choice but to insist, as had his predecessors, that all children born of French subjects abroad are, to all intents and purposes, French subjects also.

"Count Walewski, however, said that as the law would without doubt be altered, he had recommended the Buenos Ayres government to let the matter rest for the present."

The French law never has been altered.

On the 3d of March, 1860, Mr. Thornton forwarded a copy of a treaty concluded between Spain and the Argentine Confederation, containing among other provisions an article stipulating that the sons of Argentines and Spaniards, born in those respective countries, should be allowed to choose the nationality they may prefer, and suggested that England might claim for the sons of her subjects any exemption from military duty which this treaty might confer on the sons of Spaniards.⁶

¹ Mr. Christie, No. 125; October 28, 1857. ² To Mr. Christie, No. 1; January 4, 1858. ³ Mr. Christie, No. 13; April 15, 1858. ⁴ Lord Cowley, No. 625; November 28, 1857. ⁵ Lord Cowley, No. 1, 745; December 29, 1857. ⁶ Mr. Thornton, No. 25; March, 1860.

Lord John Russell replied that it did not appear that any special privilege was secured to Spain by this treaty, which merely adopted, as between the contracting parties, the existing law of each country as to nationality; and that even if any privileges had been given by this treaty to Spaniards, there was no more most-favored-nation clause on this particular point in the British treaty of 1825, which entitled British subjects to claim the benefit of them.¹

On the 27th of November, 1861, Lord Russell instructed Mr. Thornton that, if the sons of British subjects wished exemption from military service, they should exercise the option given to them by Argentine law, between Argentine and British nationality.²

In 1862 Mr. Thornton raised the question whether, as the Argentine Provinces and the state of Buenos Ayres were recognized as separate belligerents, the sons of British subjects born within the provinces might not claim exemption from service in Buenos Ayres, and *vice versa*.

Mr. Thornton was informed that, in the absence of any treaty stipulation, even aliens may under certain circumstances be rendered liable to military service in the country of their domicile, without any violation of international law, and that it must be remembered that the persons in question were not aliens in the Argentine Confederation.³

Moreover, the law of September 29, 1857, seemed to extend to the sons of aliens, wheresoever born, and the provinces might therefore contend that those who had omitted to take advantage of its provisions had thereby constituted themselves Argentines by default.

In August, 1863, Mr. Doria reported that it was proposed to pass a new law by which all persons born within the Argentine Confederation should be declared to be Argentine citizens irrespective of the nationality of their parents.⁴

Mr. Doria was approved for having protested against a retrospective application being given to this law, in regard to the children of British parents; as, although it appeared that there were no adult persons of this class who had availed themselves of the option given by the law of 1857, to elect to be deemed British subjects, yet there might be others still in their minority whose time for making their election had not yet arrived.

At the same time such a law would not be *ultra vires* of the Argentine Confederation. It was quite competent to the Confederation to pass such a new law, though, as an act of comity, it would be preferable to retain the previous one.

AUSTRIA.

During the Venetian insurrection in 1848 the provisional government claimed a right to exact payment to a forced loan from certain British and Ionian subjects, on the ground that, by an Austrian decree of the 15th of May, 1833, they had acquired Austrian (and therefore Venetian) citizenship.⁵ (See Laws of Austria, and addenda H.)

This decree provided that all foreigners who, at the date of its publication in those provinces, should have completed an uninterrupted residence of ten years were allowed to free themselves from the Austrian citizenship acquired by such residence, on giving proof that they never had an intention of becoming Austrian citizens. Such proof was to be given within six months from the date of the decree, in default of which it would no longer be admitted.

The Venetians maintained that under this law British subjects who had resided uninterruptedly for ten years in Venice became Venetian citizens, unless they expressly renounced that citizenship.

Mr. Consul-General Dawkins remonstrated against the interpretation put upon this law, and his having done so was approved by Her Majesty's government.

It appeared, however, that some of the persons thus pleading their quality of British subjects as exempting them from the forced loan had taken office under the Venetian government.

Lord Palmerston instructed Mr. Dawkins that such persons were, by the twenty-ninth article of the Austrian civil code, liable to be considered as subjects of the Venetian government, and consequently not entitled to exemption. Lord Palmerston did not, however, disapprove of Mr. Dawkins having endeavored to preserve them from the severe effect of the forced contribution imposed by the provisional government.

BELGIUM.

In December, 1860, a case occurred at Brussels, (that of M. Ignatius Téleki,) in which various questions were put to Her Majesty's government by Lord Howard de Walden, as to the status of naturalized British subjects.⁶

¹ To Mr. Thornton, No. 42; July 7, 1860. ² To Mr. Thornton, No. 54; November 27, 1861. ³ To Mr. Thornton, No. 22; May 28, 1862. ⁴ Mr. Doria, No. 84; August 28, 1863. To Mr. Doria, No. 38; November 4, 1863. ⁵ Consul-General Dawkins, No. 117; August 26, 1848. To Consul-General Dawkins, No. 36; November 28, 1848. ⁶ Lord Howard de Walden, No. 151; December 3, 1860. Lord Howard de Walden, No. 152; December 3, 1860. To Lord Howard de Walden, January, 1861.

Under the advice of the law-officers the following instructions were furnished for his guidance:

"The first question is, whether a person who was naturalized as a British subject previously to the 24th of August, 1850, is entitled to a permanent passport; and the answer to it is, that as the rule in regard to the limitation of time in passports granted to naturalized British subjects applies only to those naturalized subsequently to the above-mentioned date, there can be no question as to the right of a person naturalized previously to that date to receive, like any natural-born British subject, a passport not limited in regard to time.

"The second question is, whether a woman, either by birth a British subject, or a naturalized British subject, or an alien, is entitled, on being married abroad to a naturalized subject, to receive a passport in her new character of a married woman. The answer is, that if the woman is a natural-born British subject, she does not lose that character by marrying a naturalized British subject, and that consequently she is entitled to a fresh passport as a British subject in her married name; but if the woman is a naturalized British subject, or an alien, then, as the woman cannot in her married state travel under her maiden name, and as whatever may have been her nationality before marriage, she acquires upon marriage the nationality of her husband, she is entitled to be placed in regard to a passport on the same footing as her husband; and, consequently, in such a case, Her Majesty's ministers or consuls would be authorized to act exceptionally, and to grant to the woman an original passport, subject to the same conditions as the passport held by her husband, that is to say, to a passport not limited in point of time, if her husband's passport is not limited, or limited so as to correspond with the limit of time at which her husband's passport will expire, if her husband's passport is limited. But in no case must the wife's name be inserted in the passport held by the husband previously to the marriage; for no minister or consul is authorized under any circumstances to insert an additional name in a passport, whatever number of names such passport, when originally granted, was stated to include."

Your lordship asks three further questions:

"1st. As regards the character of the children of a British naturalized subject born abroad, the answer is, that such children share the character of their father, and are to be considered as naturalized British subjects, so long at least as they are under age and living with their father.

"But this is, of course, subject to the local law which may rightly deal with children born in the country, whatever may be the circumstances of their father, as natural-born subjects of the country in which they were born.

"2d. Whether naturalized subjects are entitled to be married at Her Majesty's legations or consulates. The answer is that they are so entitled.

"3d. Whether naturalized subjects are to be presented at court by Her Majesty's diplomatic servants; and to this I reply that I see no ground on which a general rule excluding them from such presentations should be laid down; and I consider that Her Majesty's representative may properly use in regard to the presentation of naturalized British subjects the same discretion as they are in the habit of using in regard to natural-born."

BRAZIL.

In March, 1845, Mr. Hesketh, Her Majesty's consul at Rio de Janeiro, forwarded to Lord Aberdeen a copy of a representation which he, in conjunction with the French and other consuls, had addressed to the Brazilian government, remonstrating against the interpretation given to the sixth article of the constitution of Brazil, namely: that excepting those foreigners who may be in Brazil in the service of their own states, the offspring of all other foreigners born in Brazil must necessarily be Brazilians.¹

Lord Aberdeen replied that "inasmuch as by the law of the United Kingdom all persons born within the allegiance of the British Crown are deemed to be British subjects, you would have acted more prudently if you had refrained from signing the representation made to the Brazilian government respecting the nationality of the children of foreigners born in Brazil."²

In 1849 Her Majesty's consul at Peru asked whether the children of British subjects born in Portugal were to be considered as British subjects in Brazil, and was informed that children of British subjects born elsewhere than in Brazil, and whether in a British territory or in a foreign country, are to be regarded in the light of British subjects, and to be entitled to protection as such.³

On the 2d of April, 1853, Mr. Jerningham reported that he had been in communication with the Brazilian government respecting the forced conscription of the sons of

¹ Consul Hesketh, No. 16; March 27, 1845. ² To Consul Hesketh, No. ; August 30, 1845. ³ Consul Ryan; January 17, 1849.

British subjects born in Brazil, and that the Brazilian minister had stated to him that it was proposed to bring forward a law in the Brazilian chambers providing that up to the age of 21 years, sons born in Brazil of British residents should remain under the control of their parents, and that on attaining their majority they should be allowed to choose between British and Brazilian nationality.¹

Mr. Jerningham remarks in this dispatch that the French claimed complete exemption for the sons of French subjects thus situated, and that though the Brazilian government did not acknowledge the claim, they did not attempt to force such Frenchmen into their army.

Lord Clarendon instructed Mr. Jerningham to say that Her Majesty's government agreed to the proposed clause, but that they hoped that "either by legislative enactments, or by the course hitherto adopted by the Brazilian government, no British subject will be called upon to perform military service."²

It appeared subsequently that there had been some misunderstanding between Mr. Jerningham and the Brazilian minister, and that the proposed clause was intended to apply reciprocally to the subjects of those States, the laws of which acknowledged the children of Brazilians born within their territories to be Brazilians, and would not, therefore, affect British subjects.³

Lord Clarendon then directed Her Majesty's minister to inquire whether the Brazilian government really intended to carry out the principle of reciprocity, and to place children born of British subjects in Brazil on exactly the same footing with regard to military service as that in which the children of Brazilian subjects were placed in England; as the imposition on them of forced military service would be plainly inconsistent with such a principle, "for, although a power does exist in this country in certain contingencies, very unlikely to occur, of resorting to the ballot for raising militia, (in which case, however, substitutes would be allowed,) yet, in point of fact, both the regular army and the militia are recruited entirely by volunteers, and there is therefore, practically, no forced military service in England."⁴

At the close of 1853, there was a change of ministry in Brazil, and in April, 1854, Mr. Howard (who had succeeded Mr. Jerningham) called the attention of the new government to this subject, but without receiving any reply.⁵

He again pressed it on their attention in August, when the foreign secretary, Senhor Limpo de Abreo, promised to look into the matter, but "gave no hope of an alteration in the laws of nationality, saying that he thought they could not constitutionally be interpreted in the manner in which the late minister for foreign affairs, Senhor Paulino, had in view; that such an alteration would meet with considerable opposition in the chambers, and that he himself doubted its expediency."⁶

Being urged to take some steps to bring the question to a conclusion in October, 1854, Senhor de Abreo repeated that it presented great constitutional difficulties, and could not be solved without the concurrence of the legislature.⁷

This closed the correspondence.

It is to be observed that neither in 1852 nor 1854 do there appear to have been any particular cases reported in which the sons of British subjects were forced into the Brazilian service, and it may, therefore, be presumed that the Brazilian authorities continued to act upon an unofficial arrangement come to with Mr. Jerningham in 1853, by which such persons were practically exempted from the conscription.⁸

In December, 1865, Mr. Spence, a member of the English bar, who had been born in Brazil, applied for the appointment of law adviser and translator to Her Majesty's mission at Rio de Janeiro.

Mr. Spence (in reply to an observation respecting the inconvenience which might be occasioned by a person whom the Brazilian government could claim as their subject being employed in such a capacity,) stated "that although there can be no question, according to article 6 of the Brazilian constitution, that from having been born in Brazil, though of British parents, I became a Brazilian subject, I respectfully submit that from having (when called to the bar in 1858) sworn allegiance to Her Majesty, I lost my Brazilian nationality, according to article 7 of the same constitution. It is true that the words of article 7 are 'naturalization,' but the taking of the oath of allegiance would, no doubt, be held equivalent to naturalization. But even if that were not so, the acceptance by a Brazilian subject (without the license of the Emperor) of any office from a foreign government would cause the loss of Brazilian nationality, as may be seen on reference to clause 2 of article 7 of the same constitution."⁹

Mr. Spence forwarded translations of the articles of the constitution referred to:

¹ Mr. Jerningham, No. 20; April 2, 1853. ² To Mr. Jerningham, No. 22; July 8, 1853. ³ To Mr. Jerningham, No. 30; August 8, 1853. Mr. Jerningham, No. 85; September 13, 1853. To Mr. Howard, No. 14; October 31, 1853. ⁴ To Mr. Howard, No. 14; October 31, 1853. ⁵ Mr. Howard, No. 82; April 25, 1854. ⁶ Mr. Howard, No. 162; August 11, 1854. ⁷ Mr. Howard, No. 199; October 13, 1854. ⁸ Mr. Jerningham, No. 20; April 2, 1853. ⁹ To Mr. Spence; December 20, 1865. Mr. Spence; December 26, 1865.

WHO ARE BRAZILIAN CITIZENS?

"ARTICLE 6.—1. Those born in Brazil, either free or freedmen, although the father be a foreigner, if not resident in the service of his nation.

"2. Children of a Brazilian father, and the natural children of a Brazilian mother, born in a foreign country, who may come to have a domicile in this country.

"3. The children of a Brazilian father who may be in a foreign country in the service of the Emperor, although they do not require a domicile in Brazil.

"4. All those who, born in Portugal and her possessions, were resident in Brazil at the time when the independence was proclaimed in the provinces where they lived, and shall have expressly adhered to the said independence, or impliedly by continuing their residence in Brazil.

"5. Foreigners naturalized, whatever may be their religion.

* * * * *

THOSE WHO ARE DEPRIVED OF SUCH RIGHTS.

"ARTICLE 7—1. Those who have become naturalized in a foreign country.

"2. Those who, without the Emperor's license, accept any employment, pension, or decoration, from any foreign government.

"3. Those sentenced to banishment."

CHINA.

Difficulties having arisen with regard to the claims to British protection to British-born subjects of Chinese origin within the Chinese Empire, it has been arranged that they should wear a distinctive dress, and a government notification to that effect has accordingly been published at Hong-Kong.

"The following circular from his excellency Sir Rutherford Alcock, K. C. B., with its inclosure, relative to British subjects of Chinese descent residing or being in Chinese territory, is published for general information.

"J. GARDINER AUSTIN,

"Colonial Secretary Administering the Government."

"GOVERNMENT OFFICES,

"Hong-Kong, November 2, 1868."

"Circular No. 10.

"PEKIN, October 7, 1868.

"SIR: Pursuant to instructions from Her Majesty's secretary of state for foreign affairs, I have issued the inclosed notification regulating the conditions under which persons of Chinese descent, who are British subjects, may reside or travel in China under British protection.

"You will observe that it is left entirely optional to such persons to claim the status of British subjects within the Chinese territories or not, as they may see fit. But in the event of their electing to sink their British nationality, and reside or travel as Chinese among Chinese, they cannot claim any exemption from the jurisdiction and laws of the country they adopt of their own free will, and after due notice of the consequences.

"You will give all due publicity and effect within your jurisdiction to the inclosed, in conformity with the provisions of the Queen's order in council of 1865.

"Your obedient servant,

"RUTHERFORD ALCOCK.

"To Her Majesty's CONSUL, &c., &c., &c., Shanghai."

"Notification.

"Whereas many persons of Chinese descent, who are or claim to be British subjects, go to reside or travel in the dominions of the Emperor of China, and whereas serious difficulty exists in distinguishing such British subjects from natives amenable to Chi-

nese laws only, and accordingly great practical inconvenience frequently results to the parties themselves, and to the authorities of both countries; and whereas it is desirable, with a view to the maintenance of order and good government of British subjects of Chinese descent resorting to China, and for the maintenance of friendly relations between British subjects and Chinese subjects and authorities, that a remedy should be provided for such inconvenience: Therefore, by the authority and power vested in me by the eighty-fifth section of the China and Japan order in council, 1865, I do declare and order that all British subjects of Chinese descent shall, while residing or being in Chinese territory, discard the Chinese costume and adopt some other dress or costume whereby they may readily be distinguished from the native population. And I do further warn all British subjects of Chinese descent so residing or being in the Chinese dominions as aforesaid, that in the event of their infringing or not observing this order and regulation, they shall not be entitled to claim British protection or interference on their behalf in any court of justice or elsewhere in the Chinese dominions.

"And I do further order that every British subject of Chinese descent who shall sue in any Chinese court of justice, or appear in public before the authorities of the empire, shall be and is hereby required to pay all due respect to the Chinese authorities according to the custom and usage of the country, save and except that such British subject shall not be bound or required to observe any custom or ceremony whereby he would admit that he is a subject of His Imperial Majesty.

"Given under my hand at Peking this sixth day of October, one thousand eight hundred and sixty-eight.

"RUTHERFORD ALCOCK,

"Her Britannic Majesty's Envoy Extraordinary, Minister Plenipotentiary, and Chief Superintendent of Trade."

COLOMBIA—NEW GRANADA.

A correspondence took place in 1847-'48-'49 respecting the laws affecting aliens in New Granada.¹

This was renewed in 1855.

The principal subjects treated of were the law as to intestate estates and a decree which had been issued respecting claims for losses suffered during the civil war.

In 1861 Mr. Griffith requested to be informed whether Mr. Bransby, a British subject, residing in New Granada, and who had accepted an appointment as interpreter in the New Granadian civil service, was to be considered a British subject.

Mr. Griffith was instructed that Mr. Bransby had not, by accepting such employment, forfeited his allegiance, or ceased to be a British subject; and it was not suggested that he had formally renounced his British allegiance, or taken any oath of allegiance to the republic of New Granada.²

His rights, therefore, to protection as a British subject, in all matters not immediately connected with his employment as interpreter, were unimpaired, and, excepting as to such matters, he was as much entitled to British protection as he was before he accepted that employment.

In May, 1862, Mr. Griffith reported that the United States minister had communicated to him confidentially the instructions which he had received from Mr. Seward respecting the protection to be afforded to United States citizens domiciled in New Granada.³

These instructions were to the following effect:

Citizens temporarily visiting New Granada, but retaining their domicile in the United States, were to be afforded protection against any impositions of the government there for its support and maintenance.

Citizens of the United States, no matter how they acquired that title, who have gone to New Granada, become domiciliated there, and are pursuing business, or otherwise living there, without definite and manifest intentions of returning to the United States, are subject to all the laws of New Granada affecting property or material rights, exactly the same as citizens of New Granada.

Mr. Griffith adds that he has been informed that the New York commission for the liquidation of United States claims arising out of the collision at Panama in 1856, acting upon those principles, had ignored all the claims brought forward by United States citizens who were domiciled on the Isthmus at the time of the collision.

In June, 1862, Mr. Griffith forwarded a copy of an official decree declaring that for-

¹ Mr. O'Leary, No. 11; March 31, 1847. To Mr. O'Leary, No. 17; July 16, 1847. * Mr. O'Leary, No. 25; 1848. To Mr. O'Leary, No. 13; 1848. * Mr. O'Leary, No. 49; 1848. To Mr. O'Leary, No. 3; 1849. * Mr. O'Leary, No. 26; 1855. * Mr. O'Leary, No. 36; 1855. * To Mr. O'Leary, No. 15; 1855. [* These papers are missing from the volumes.] Mr. Griffith, No. 80; September 2, 1861. ² To Mr. Griffith, No. 68; November 16, 1861. ³ Mr. Griffith, No. 38; May 15, 1862.

eigners domiciled "in the republic are to be allowed to acquire real property in the same manner as natives."¹

This decree further provided that foreigners or "immigrants" should be naturalized from the moment they enter the republic, and were to be entitled to all the rights and be subjected to all the obligations of native citizens. For the space of 20 years, however, they were to be exempted from military service, except in the case of foreign war, from all direct or extraordinary contributions, and from all public employment, save that which might be imposed on them in the municipal district where they happened to reside.

Mr. Griffith was instructed that "although such a law was unusual, it was competent for a country to make and enforce it, without furnishing any ground of complaint to foreign states. The distinction drawn by it between commorant and resident foreigners seemed, on the whole, reasonable and just. The foreigner who, by the relations of property, marriage, profession, or business, and length of residence, had incorporated himself into a state, certainly owed a qualified allegiance to it, and it would be entitled to extend its protection to him with reference to all other states but that of his origin or birth. Such foreigners are truly and practically citizens of the state which they have adopted, and cannot complain that they are liable to the obligations of native citizens, with whom they are placed on an equality in every other respect."²

On the 19th of April, 1865, a law was passed defining the condition of foreigners in the United States of Colombia.³

Article 2 classifies foreigners into domiciled and transient residents.

3. Domiciled foreigners are those who establish themselves permanently, or publicly declare their intention of so establishing themselves, or have resided two years.

Temporary residents are exempted from military service or office.

Domiciled aliens are exempted from military service, forced loans, and all personal employment or office of a permanent character.

5. Repudiates any responsibility for damages suffered by aliens in time of war, they in such cases being placed on the same footing as natives.

6. Aliens interfering in civil or international contests to become subject to all the penalties and duties of Colombians.

7. This law not to interfere with treaty stipulations.

Mr. O'Leary, on this law being communicated to him, immediately remonstrated against article 5, the practical inutility of which had indeed been remarked on by the Colombian President, who had opposed its being passed.

Mr. O'Leary's remonstrance was framed on the instructions forwarded to Her Majesty's chargé d'affaires when a similar law was enacted in 1847, and was approved by Her Majesty's government.⁴

In October, 1865, Mr. O'Leary⁵ requested to be informed whether the children, born in England, of Mr. Montoya, a native Colombian naturalized in England, were entitled to exemption from the Colombian military service as British subjects.

Mr. O'Leary⁶ added that, by the Colombian constitution, the offspring of Colombian parents born abroad were to be considered as citizens "when domiciled in Colombia."

Mr. O'Leary⁷ was instructed that "This is a question of Colombian municipal law; but upon the statement contained in your dispatch, it appears that the children of Señor Montoya, who is a native Colombian, are domiciled in Colombia, and that they are subject to the obligations of Colombian citizenship. The fact that Señor Montoya is a naturalized British subject does not exempt him from the operation of the law of the State of his birth and natural allegiance while he resides in that State."

DENMARK.

The case of Mr. Rainals, British vice-consul at Copenhagen, which led to a long correspondence in 1863, illustrates the operation of the Danish laws with regard to the claim of the Danish Crown to the allegiance of aliens domiciled in Denmark.

⁸The correspondence commenced with a demand made upon Mr. Rainals for the payment of a dog-tax in 1860. Mr. Rainals pleaded exemption as an alien. The Danish government declared that he was a Danish subject, but offered to remit the tax as an act of comity; but Mr. Rainals refused such a compromise, and insisted upon being acknowledged to be a British subject.

Upon this the Danish government declared that their view of his nationality was borne out—

1. By the fact of his having sworn allegiance to the King of Denmark on obtaining a "borgerbrev" in 1848.

¹ Mr. Griffith, No. 46; June 20, 1862. ² To Mr. Griffith, No. 29; September 30, 1862. ³ Mr. O'Leary, No. 27; May 10, 1865. ⁴ To Mr. O'Leary, No. 11; March 21, 1847. ⁵ To Mr. O'Leary, No. 28; July 28, 1865. ⁶ Mr. O'Leary, No. 65; October 20, 1865. ⁷ To Mr. O'Leary, No. 6; December 21, 1865. ⁸ Sir A. Paget, No. 132; June 2, 1863.

2. By his having been born in Denmark.

With regard to the "borgerbrev," it appeared that in 1848 Mr. Rainals had settled as a broker at Elsinore, and in order to obtain permission to carry on his profession had applied to the mayor of that town for a "borgerbrev" or freedom of the city.

When this was issued to him, the Elsinore authorities alleged that he had signed the following paper:

"In the year 1848, on the 11th of May, appeared before the magistracy Harry Thomas Alfred Rainals, born at Copenhagen, aged thirty-one years, and demanded to obtain borgherskab (rights of a burgher) as clearer and agent for payment of sound dues.

"As he has satisfactorily proved his earlier respectability, and, in accordance with evidence produced, has been appointed consular agent for the United States of North America, whereby he is free from serving in the militia, nothing could be said against the said demand, and the said H. T. Rainals was, after having taken the usual burgher oath,¹ (thus worded, 'I promise and swear to be true and faithful to His Majesty our Most Gracious Hereditary Lord and King Frederick VII, to defend with my utmost power and ability his realm and land from harm, as well as to be dutiful and obedient to the burgermaster and council which are now in power and to those who come after them; and finally to act toward my fellow-citizens as it becomes and befits an honest man to do. So help me God and His Holy Word,') furnished with the rights of a burgher (borgherskab) as clearer and agent for payment of sound dues to Elsinore.

"H. T. A. RAINALS.
"ROBERT."

Mr. Rainals asserted that he had never taken any oath such as is here inserted; that the copy of the entry given to him did not include the part between brackets; and that in order to take an oath he must have held up three fingers, which he distinctly recollected he had not done. He further showed that he had resigned his "borgerbrev" in 1859.

Sir A. Paget then requested the Danish government to explain whether they considered the mere fact of obtaining a "borgerbrev" constituted a person a Danish subject.

The foreign secretary replied (May 28, 1863): "Quant à la question positive à savoir si un sujet Britannique en prêtant le serment de bourgeois devient sujet Danois, il est de fait qu'en prêtant le serment il se fixe dans ce pays, et en se fixant et en prenant domicile en Danemark il devient sujet Danois et entre dans tous les droits et tous les devoirs civils et sociaux d'un sujet Danois. Pour ce qui regarde les droits et les devoirs politiques, ceux-ci n'appartiennent qu'à ceux qui sont en possession de l'indigénat qui, s'il n'est pas acquis par le fait même de la naissance dans ce pays, ne peut être obtenu qu'en vertu d'une loi. Quant au côté négatif, à savoir, si un sujet Britannique en acquérant les droits et en se soumettant aux devoirs d'un sujet Danois perd sa qualité de sujet Britannique, c'est là une question dont la solution paraît dépendre le plus spécialement de la législation Britannique. Pour ce qui est de notre législation relativement à ce point, celle-ci ne s'oppose pas à ce que la coexistence de deux nationalités puisse être admise dans la personne du même individu; seulement, dans le principe, sa qualité de sujet étranger ne doit porter aucune atteinte à l'accomplissement des devoirs qui lui incombent comme sujet Danois."

With regard to his having been born in Denmark, Mr. Rainals cited an opinion given by the attorney-general of Denmark on a recent occasion when a bill respecting the naturalization of certain foreigners had been discussed in the chambers.

A decree of January 15, 1776, provided that children of foreigners, born in Denmark, can claim the rights of Danish citizenship after a permanent residence in that country up to their eighteenth year.

The attorney-general gave it as his opinion, though other lawyers differed on the subject, that by the terms of this decree the children of aliens born in Denmark were capable of being admitted to the rights of natural-born Danish subjects; and Mr. Rainals accordingly argued that this was conclusive proof that they were not considered to be natural-born subjects. Moreover, one of the persons for whose naturalization the act under discussion made provision was stated to have been born in Denmark.

Sir Augustus Paget² now referred the question for the consideration of Lord Russell; and, after further information on the points of law raised in it had been procured from Copenhagen, Lord Russell, under the advice of the Queen's advocate, instructed him that "it is not denied that Mr. Rainals was born in Denmark, and the opinion of the Danish lawyers so far coincides with that expressed by M. Hall that the renunciation by Mr. Rainals of his rights as a citizen of Elsinore does not relieve him from the obligations of allegiance to the Crown of Denmark.

"It is admitted that he obtained the 'borgerbrev,' and he must, under these circumstances, be deemed to have taken the usual preliminary oath.

¹This oath has been since modified. (See Sir A. Paget's Despatch, p. 1-16.) ²To Sir A. Paget, No. 141; August 26, 1863.

"I infer also that he obtained this 'borgerbrev' on the footing of a Danish subject, and without the delay of five years, which would have been necessary for a foreigner. It appears that, though by returning the 'borgerbrev,' he is replaced in his former position, he nevertheless remains subject to whatever obligations attach to a person born in Denmark and subsequently resident there."

¹ In 1864 a case occurred at Saint Croix in which the Danish authorities claimed to administer to the estate of a deceased British subject who had taken out a "borgerbrev" in that island.

As the person in question had been domiciled at Saint Croix at the time of his death, Her Majesty's consul was not instructed to contest the interpretations put by the authorities on the effect of taking out such a burgher license; but it was considered that some arrangement should be made with them whereby the absent heirs and next of kin of a British subject so situated should be apprised, by notice in the London Gazette, of the intended distribution of such property by Danish tribunals.

FRANCE.

The registers of the correspondence between England and France for the last five-and-twenty years have been searched; but they do not present many cases of interest.

² Lord Cowley forwarded, in 1855, a report by M. Treitt on a question between the French and British governments respecting the administration to the intestate estate of a naturalized Brazilian subject, named Braga.

Señor Braga died at Paris, leaving a son born in Brazil, of a Brazilian mother, and a second wife, a Frenchwoman, with two sons born in France.

The Brazilian consul first proceeded to administer to the estate on behalf of the eldest son, who was absent in Brazil, and then on behalf of the two younger sons, "enfants mineurs nés en France, mais sujets Brésiliens aux termes de la loi Française."

The widow opposed the consul's interference in regard to the younger sons, and appealed to the "Tribunal Civil de Première Instance," which, by two summary judgments, confirmed the consul's powers. The matter was then referred to the Brazilian government, who instructed the consul to abstain from taking any further proceedings on behalf of the minor children, as by a recent Brazilian decree, the administration to the intestate property of aliens was vested in the local authorities, and not in the consul of the alien's country, when the widow was a Brazilian and the children born in Brazil.

This case rather concerns Brazilian than French law; but it is worthy of remark, as illustrative of the French doctrine, as to the nationality of the minor children of aliens born in France.

³ In August, 1856, the French chargé d'affaires in London recommended to the favorable consideration of Her Majesty's government a petition from the French residents in British Guiana, praying for exemption from the local militia.

⁴ The French embassy was informed (October 10, 1856) that "to hold out to the French residents in British Guiana, in general terms, that they are specially favored, would, in the opinion of Her Majesty's government, place them in a false position, and would raise expectations that could not be fulfilled, inasmuch as they cannot be exempted from militia service, which is the particular favor that they solicit."

"As the French settlers appear to make this application from the fact that the Portuguese are exempted from militia service, I have the honor to acquaint your excellency that this exemption is owing to certain provisions of a treaty,⁵ which appear to Her Majesty's government to be so manifestly inexpedient and objectionable in principle, that they have now under consideration the propriety of opening negotiations for an alteration of that treaty in this respect."

⁶ In December, 1857, the colonial office forwarded copies of a correspondence with the governor and lieutenant-governor of British Guiana on this subject, and asked whether any communication should be addressed to the French government, or whether the claim of the French residents to exemption should be directly negatived.

¹ Consul Rainalds; June 9, 1864. ² Lord Cowley, No. 1,188; September 7, 1855. ³ Baron de Malaret; August 21, 1856. ⁴ To Count de Persigny; October 10, 1856. ⁵ The treaty referred to is the Treaty of Commerce and Navigation of July 3, 1842. Article I. "They shall be exempt from forced loans or any other extraordinary contributions not general or not by law established, and from all military service by sea or by land." Similar provisions are inserted in most treaties of this description, and are of essential service to protect British subjects from conscription. See treaties with Russia, Italy, &c., and the recent treaty with Colombia, February 16, 1866. Article XVI. "The subjects and citizens of each of the contracting parties in the dominions and possessions of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, or national guard or militia." There is no such general treaty with France. ⁶ Colonial office; December 23, 1857.

¹ Lord Clarendon, in reply, stated that he considered that the note to the French ambassador of the 10th of October, 1857, was "a sufficient announcement of the intentions of Her Majesty's government with regard to this question."

² In December, 1857, Lord Cowley requested to be informed whether a gentleman named Julien Colonna Walewski, born in London, of Polish parents, was to be considered³ and protected as a British subject in France.

⁴ Under the advice of the law officers, Lord Cowley was instructed that, under the circumstances stated, M. Walewski was entitled to be so considered.

The correspondence previously referred to ("Argentine Republic—Buenos Ayres,") arose about this time respecting the protection to be afforded to the children born of British and French parents in Buenos Ayres, in the course of which the French government requested to be informed of the state of the British law with regard to the children of aliens born within British territory.

⁵ In reply to the inquiries thus made by the French government, Lord Clarendon directed Lord Cowley to state to them, "With reference to the questions put to you by Count Walewski, as reported in your dispatch No. 1625, I am not aware of any treaty between this country and a foreign state which would give to children born of British parents in those states the rights of British subjects; and in reply to his excellency's inquiry as to what is the law of England in such matters, I have to observe that the general law of England in the matter is that all children, of whatsoever parentage, born in the Queen's dominions, are British subjects by birth, and are in England entitled to the privileges and liable to the obligations of that status."

"The children of British subjects, although born abroad, if their fathers or their grandfathers by the father's side were natural-born subjects, are by certain British statutes to be deemed natural-born subjects themselves to all intents and purposes in England; but neither these statutes nor the general principles of English or international law, or of reciprocity or comity so far as great Britain is concerned, would justify her in maintaining that such persons are 'British subjects' within the true intent and meaning of a treaty with a foreign nation in which their case is not specially provided for, or in contending that they are, while residing in such foreign country, exempt from the obligations incident to their status as natural-born subjects or citizens of such foreign country, of their actual birth and residence. Great Britain may confer upon them any privileges as far as her own territories are concerned, but no such privileges can avail as against or in derogation of their antecedent natural and legal obligations to the country of their birth."

Earl of Malmesbury to the Earl of Cowley.

FOREIGN OFFICE, *March 13, 1858.*

⁶ MY LORD: Your excellency recently requested to be informed how the decisions could be reconciled which had been come to Her Majesty's government upon two cases of nationality which had been under their consideration.

"The first of the two cases was that of a gentleman named Julien Colonna Walewski, who had claimed from your excellency to be considered a British subject on the ground that his father (a Polish emigrant) had gone to England in 1824, where he had married an English lady, and had resided in England up to the time of his death in 1854, during which period Mr. J. C. Walewski had been born in London. In this case it was the opinion of Her Majesty's government that M. Walewski, having been born in London, was, under the circumstances, entitled to be considered a British subject in France.

"The second case had been raised with regard to the law of this country on the question of the nationality of children of British subjects born in foreign countries, as bearing upon the general question at issue with regard to compulsory enlistment by the government of Buenos Ayres. The opinion given by Her Majesty's government upon this case was that all children, of whatever parentage, born in the Queen's dominions, are British subjects by birth, and are in England entitled to the privileges and liable to the obligations of that status.

"Your excellency pointed out with reference to these two decisions, that it appeared to you that according to the latter it is only in England that foreigners born in England enjoy the rights of British subjects; whereas, according to the former, M. Walewski was to be treated as a British subject in France.

"I have now to inform your excellency that Her Majesty's government, having carefully considered the difficulty suggested by you, do not see that there exists any contradiction between the two decisions.

"If M. Julien Colonna Walewski had been born in France, (although of British parents,) and had voluntarily returned to France, he would have been a British subject

¹ To colonial office; January 11, 1858. ² Lord Cowley, No. 1691; December 19, 1857. ³ To Lord Cowley, No. 1813; December 31, 1857. ⁴ Law officers; December 26, 1857. ⁵ To Lord Cowley, No. 1780; December 24, 1857. ⁶ To Lord Cowley, No. 78; March 13, 1858.

in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth and domicile.

"And this, as it appears to Her Majesty's government, is precisely the case of the children of British subjects who are born and resident in Buenos Ayres. They are British subjects in England, but this cannot prevent their being considered and treated as Buenos Ayreans in Buenos Ayres; but M. Waleski was born in England, and, as such, is a natural-born subject of Her Majesty, and the circumstance that his father was a Pole cannot disentitle him to British privileges in France.

"It is competent to any country to confer, by general or special legislation, the privileges of nationality upon those who are born out of its own territory, but it cannot confer such privileges upon such persons as against the country of their birth, when they voluntarily return to and reside therein. Those born in the territory of a nation are (as a general principle) liable, when actually therein, to the obligations incident to their status by birth. Great Britain considers and treats such persons as natural-born subjects, and cannot therefore deny the right of other nations (as Buenos Ayres) to do the same.

"But Great Britain cannot permit the nationality of the children of foreign parents born within her territory to be questioned. The expression, 'in England,' found by your excellency in the decision given by Her Majesty's government in the Buenos Ayres case, referred to the inquiry of Count Walewski, as reported by you, 'What is the law of England in such matters?'

"I am, &c.,

"MALMESBURY."

¹ In reply to an inquiry addressed to the foreign office in July, 1859, Lord John Russell stated to M. Julien that, "independently of any disabling clause which they may contain, British letters of naturalization do not give the holders of them any right to British protection in the country of their birth."

A case occurred in 1861 in which a M. Casaubon claimed protection from the British embassy at Paris to procure his exemption from the conscription on the ground that he was born in the Mauritius.

² It appeared that his father was a Frenchman, and the French government accordingly claimed him as a French subject.³

⁴ Lord Cowley was instructed to request the French government to state the reasons upon which "M. Casaubon had been subjected to the conscription, notwithstanding his certificate of British nationality, and the fact of his having been born in the Queen's dominions, and having resided there until he was of age."

The result of Lord Cowley's application to the French government was not reported.

⁵ A question arose in February, 1861, as to the right of a naturalized British subject, Mr. Zwinger, a Swiss by birth, to be married at the British embassy.

⁶ Lord Cowley was instructed to allow the marriage in question to be solemnized at the British embassy, taking care that the bride was previously informed that Mr. Zwinger may be considered legally as a Swiss citizen, as well as a naturalized British subject; and that the validity of the marriage might be open to doubt in Switzerland, France, and elsewhere out of England, and recommending her to be previously married in the French civil form.⁷

GERMANY.—FRANKFORT.

⁸ Sir Alexander Malet having requested to be informed, in June, 1863, whether a naturalized British subject is entitled to claim, in the land of his birth, British protection against any penalties which he may have incurred by the act of withdrawing himself from his native land, Lord Russell⁹ replied, "That a foreigner who has become a naturalized British subject cannot claim British protection against the operation of the law of his native country, so as to exempt himself from any penalties which the law of his native country may inflict upon him when he returns to it."

¹⁰ In April, 1864, a Mr. Grimm applied to Sir A. Malet for protection as a British subject on the ground that he had received a "denization"¹¹ act issued by a judge of the supreme court of New South Wales in 1856, though he had been domiciled in Germany since 1859.¹²

¹³ Mr. Grimm had been convicted of an assault on a railway guard in the grand duchy

¹ To M. Julien, July 11, 1859. ² Lord Cowley, No. 426. ³ Lord Cowley, No. 364; March 20, 1861. ⁴ To Lord Cowley, No. 347; March 20, 1861. ⁵ Lord Cowley, No. 194; February 4, 1861. ⁶ Queen's Advocate; February 27, 1861. ⁷ To Lord Cowley, February 24, 1861. ⁸ Sir A. Malet, No. 81; June 2, 1863. ⁹ To Mr. Corbett, No. 2; June 19, 1863. ¹⁰ Sir A. Malet, No. 129; April 30, 1864. ¹¹ Sir A. Malet, No. 136; May 13, 1864. ¹² Sir A. Malet, No. 139; May 24, 1864. ¹³ Sir A. Malet, No. 140; May 28, 1864.

of Hesse, and he requested Sir A. Malet to get the sentence of imprisonment passed on him reversed.

¹ Sir A. Malet was instructed that if the country of Mr. Grimm's birth was the same as the one whose court had tried and condemned him, Her Majesty's minister ought not to interfere on his behalf, on the ground of the alleged act of denization; but if Mr. Grimm had been tried in the court of a third country, *i. e.*, not the country of his original allegiance, then Sir A. Malet should use his good offices in whatever manner might be expedient and discreet.

It turned out that Mr. Grimm was a Prussian by birth, and Sir A. Malet accordingly entered into an official communication with the authorities, and Mr. Grimm's sentence appears to have been eventually commuted for a fine on his petitioning the Grand Duke.

HANSE TOWNS.

James Terry having applied to Colonel Hodges for exemption from service in the civil guard, in 1851, Lord Palmerston furnished Colonel Hodges with the following instructions:

² "It appears that James Terry, the person whose case you quote, was born in Hamburg, and must therefore be considered, while within the State of Hamburg, as a Hamburg subject; and it appears, moreover, that his father was admitted a citizen before the son attained his twelfth year, and that by the law of Hamburg the son would, on that account, also be deemed a Hamburg subject. Under those circumstances there can be no reason to question the liability of James Terry to serve in the civic guard, or in the federal contingent, precisely the same as any other native of Hamburg.

"With respect to the general liability of British subjects resident in Hamburg to perform either or both of these kinds of service, I have to authorize you to give way to the liability of British subjects to serve in the civic guard for the protection of the city in which they reside, if you should find it necessary to do so; but you should strenuously resist any pretension to require British-born subjects, whether admitted or not to the rights of citizenship, to serve in the Hamburg contingent, because that contingent is not a force raised and embodied for the maintenance of order within the city and state of Hamburg, nor even solely for the defense of the Hamburg state, but is a portion of the army of Germany, and is organized for the purposes of foreign war, beyond and out of the Hamburg territory, to be waged not merely for the Hamburg interests, but possibly for the interests of any one of the other states of Germany; and the making of such a war would not depend upon the will and decision of the government of Hamburg, but upon the will and decision of the central diet.

"It thus might happen not only that British subjects might be brought without, and even against their will, into conflict with the troops of states in amity or alliance with England, but that they might actually be compelled to take the field against the troops of their own country and sovereign."

A similar case occurred in 1863.

³ Mr. Charles James Bosdet claimed exemption from military service as a British subject.

⁴ He was the eldest son of a Mr. Bosdet, a British subject, who caused himself to be made a citizen of Hamburg in 1843, who had ever since resided there and was then residing there with all his family but his eldest son. Mr. C. J. Bosdet was born in Hamburg and resided there till he was twenty-two years of age.

Mr. C. J. Bosdet having quitted Hamburg, the senate published his name in the list of deserters, thereby subjecting him to certain penal consequences should he return within the Hamburg territory.

It was decided that the enforcement of the decree of the senate within their jurisdiction, should Mr. Bosdet place himself within it, would not constitute any ground for the official interference of Her Majesty's government, and instructions in this sense were accordingly furnished to Her Majesty's chargé d'affaires.

⁵ Another case occurred in 1866, in which Mr. C. Dodgshun, born in Hamburg, of a British father, who had become a burgher of that city, claimed exemption from the conscription as a British subject.

It was decided "that Her Majesty's government cannot gainsay the right of the Hamburg authorities to treat him, so far as their jurisdiction is concerned, as a citizen, or to sequester his property in Hamburg, though they can have no right to touch the property of his brother and sister."

In August, 1866, another of the Bosdet family appeared as a claimant to British protection.

¹ To Sir A. Malet, No. 36; May 9, 1864. ² To Colonel Hodges; March 7, 1851. ³ Mr. Ward, No. 54; September 4, 1863. ⁴ To Mr. Ward, No. 14; September 30, 1863. ⁵ Mr. S. Williams; January 15, 1866.

In this instance, the applicant, A. Bosdet, had been born in Jersey, and was resident in Scotland.

¹ Mr. Ward was instructed "that Alfred Bosdet seems to be the son of a native citizen of Hamburg, now a domiciled merchant in that town. The municipal laws of Hamburg treat the son of such a citizen as a subject, and place him, so far their jurisdiction extends, under the obligations of a citizen, one of which is to serve in the Hamburg military force. The fact that Alfred Bosdet was born in England confers on him, according to the law of this country, the character of an English subject; and there arises, or may arise, in these cases a conflict of jurisdiction; but as the law of England also considers the son of a native subject, wherever he is born, as an English citizen, the English government cannot fairly complain of the law of Hamburg, which in this respect is the same; nor can it interfere with the execution of that law within the town of Hamburg. You may accordingly represent to the Hamburg authorities that Alfred Bosdet has become an English subject, and ask, *as a matter of comity*, that his name may therefore be taken off the military list. Mr. Ward cannot be properly instructed to insist, *as a matter of right*, upon this being done."

SAXONY.

² In 1865 Mr. Murray asked what was the nationality of a child of foreign parents born on board a British vessel, and of a child born without the British dominions, of foreigners naturalized as British subjects.

³ Lord Russell replied, "I am of opinion that a child of foreign parents born on board one of Her Majesty's ships of war would be a British subject, wherever the ship might be; and that a child born on board a British merchant or private unprivileged vessel on the high seas would also be entitled to be considered a British subject. It is more doubtful whether such a child born on board such a vessel in the port or waters of a foreign state would be entitled to be considered as a British subject.

"A child born without the British dominion of foreign parents, naturalized as British subjects, would be entitled to be considered as a British subject with reference to all other States but that to which his parents owed an original allegiance, unless indeed that State had, by its own law, allowed its subject to divest himself of his allegiance."

GREECE.

A question arose at Corfu in 1866, relative to the liability of British subjects domiciled as Ionian citizens in that island to be drawn for the conscriptions, and whether they could evade it by renouncing the Ionian naturalization acquired by themselves or their fathers during the British protectorate of the island.

⁴ Her Majesty's government thought it would be a reasonable and just concession on the part of the Greek government to allow British subjects, naturalized during the protectorate of Great Britain, to have the option now of renouncing their Ionian and resuming their British nationality, provided this option be exercised without delay, and put on formal record as soon as possible.

But inasmuch as no stipulation to this effect was made in the treaty by which Great Britain renounced the protectorate, they did not think that Her Majesty's government could properly demand, as a matter of right, that such an option should be conceded to them by the government of Greece.

As it has been stated in the house of representatives that Don Pacifico, the hero of the 1847-'48 claims, was a naturalized British subject, it may be as well to mention here that he was a native British subject, having been born at Gibraltar. (State Papers, vol. xxxix, p. 356.)

GUATEMALA.

In 1859 the attention of the Guatemala government having been called to the arrangement which had been come to in Buenos Ayres for the exemption of the children of British residents from military service, Sir Charles Wyke⁵ entered into

¹ To Mr. Ward; No. 6, August, 1866. ² To Mr. Murray, No. 7; April 26, 1865. ³ To Mr. Murray, No. 7; April 26, 1865. ⁴ To Mr. Erskine, No. 31; November 15, 1866. ⁵ Sir C. Wyke, No. 1; January 20, 1859.

communications with them with the view of securing a similar exemption for the children of British residents in Guatemala.

In a note dated the 17th of January, 1859, the Guatemala minister stated, "This government acknowledges that the children of British subjects born in this republic, and as such subject by our laws to fulfill the duty of Guatemalans, have also obligations that bind them by the origin of their parents to the country where said parents were born. It acknowledges, likewise, that the discharge of these duties in a new country, and where the government and laws are also new, and not sufficiently firm, must be grievous in cases of civil war, and on account of the military service might bring with it some insecurity that might extend itself to the fathers of families and to the affairs of foreigners settled in the country, and might give rise to complications, or at all events to discussions that ought to be avoided. * * * Therefore, taking into consideration all the circumstances of the case, the government judges it very expedient to obviate by a resolution and a friendly understanding, all the difficulties caused by this inequality of conditions, and to remove for any future occurrence all motives of discussion; and taking into consideration that no serious difficulty presents itself for the reasons already expressed in the making some concession as regards the military service in favor of the sons of British subjects born in the republic, and who as Guatemalans are liable to perform their duties the same as the natives, acceding to the wishes of Her Majesty, *is willing to consider them exempt from said military service until they reach the age of 21 years, and to agree that in all cases when they may be required to perform this service they can find a substitute.*"

Sir Charles Wyke in forwarding a copy of this note to Lord Malmesbury remarked that this arrangement was more favorable than the one arrived at with Buenos Ayres, as it did not require that the substitutes should be foreigners.

^{1 2} Costa Rica, Honduras, Salvador, and Nicaragua, also acceded to this understanding.

ITALY.

³ The following extract from a dispatch addressed by Sir W. Temple to Mr. Vice-consul Barker in 1837, explains the views of the Neapolitan government in a case of disputed nationality which occurred at that date:

"I have represented to Prince Cassaro the case of Mr. John and Mr. Benedict Stuart, and he is decidedly of opinion, as well as myself, that they are British subjects, and therefore not liable by treaty to be called upon to serve in the sanitary cordon. Their father, Lieutenant Stuart, having been born in England, was a British subject, and his marrying a Messinese made no difference in the nationality of his sons, for, according to law, the wife follows the condition of the husband. Unless, therefore, the sons in coming of age had declared their intention of being naturalized, and had gone through the formalities prescribed by the law for that purpose, they remain British subjects. Prince Cassaro informed me that this question had been already decided in the case of a French subject, and he has promised me that, if it is necessary, he will apply to the minister for the affairs of Sicily for an order to secure these gentlemen from further molestation."

⁴ A question was raised by the Sardinian government in 1851 respecting the nationality of John Paul Baptiste Vertu, born at Halifax, Yorkshire, of Sardinian parents. The Turin government contended that he was a Sardinian subject.

⁵ Lord Palmerston's instructions to Mr. Hudson were: "I have now to state to you that, as a general principle, children of alien *friends*, born in the British dominions, become *de facto* subjects of Great Britain, although not absolutely, and in all cases, to the entire cessation of all the bonds, privileges, and duties which might attach to them as children of the State to which their parents might belong, particularly when they themselves return to, and abide in, their parents' country, and claim to be, and act as, subjects thereof.

"The right to be considered as British subjects, if fully and completely acquired, and not abandoned or forfeited, may be lawfully extended to them in the foreign state of which their parents were subjects; and it is not necessary, in order to render his children British subjects, that an alien friend transferring his domicile to Great Britain should previously have obtained his legal liberation from his duties and obligations to the state to which he had originally belonged."

⁶ In 1843 M. Salteri requested to be informed whether his son, who was born and then resident in England, was liable to the conscription in Tuscany.

Lord Aberdeen replied that his son, having been born and being resident within the

¹ Mr. Hall, No. 37; June 25, 1859. ² Mr. Hall, No. 48; August 19, 1859. ³ Sir W. Temple to Mr. Barker September 16, 1837. (Inclosure in Vice-consul Rickard's No. 14, March 1, 1865.) ⁴ Sir R. Abercromby, No. 152; December 3, 1851. ⁵ To Mr. Hudson, No. 9; March 23, 1852. ⁶ To M. Salteri; July 3, 1843.

dominions of the British Crown, cannot be liable to the conscription law of Italy, or of any other foreign country.

¹ In November, 1864, the Marquis d'Azeglio requested information as to the nationality of Mr. R. E. Sofio, who had claimed exemption from the conscription at Messina as a British subject, although his brother was counsel to the municipality, and as such undoubtedly an Italian.

² After some inquiry, it proved that Mr. Sofio had been born at Massina, and the Marquis d'Azeglio was accordingly told that Her Majesty's government could not protect him as a British subject.

³ Mr. Sofio, who was a merchant at New York, in the meanwhile returned to the United States, having been only a short time in Sicily on commercial business.

⁴ In February, 1865, the Marquis d'Azeglio made a similar inquiry respecting MM. Carlo Hammet and Mariano Stuart, (son of the gentleman whose case has been previously referred to,) and Lord Russell then urged the Italian government to abide by the doctrine laid down by the Neapolitan government in 1837.⁵

⁶ It seems unnecessary to enter into a detailed account of this correspondence, as the Sicilian law upon which this claim was founded, and which was then in force, has been superseded by the new Italian code. (See "Laws of Italy.")

In January, 1866, Mr. Elliot reported the case of Philip Smith, who had been drawn for the conscription at Bologna. General La Marmora refused to except him, on the ground that he came within the provisions of the Sardinian code, his father having resided for twenty years in Italy, and the profession of coachman which the father exercised not being considered "*comme un commerce ou une industrie*."

The papers were referred to the counsel to the Florence legation, who pointed out that under the new code Smith could declare himself a British subject on attaining his majority, and thus procure his discharge; but that in the meanwhile (he being twenty years of age) he must be considered as an Italian subject, and liable to military service.

This opinion is worth notice, as the age for conscription is generally eighteen; and in countries where a law similar to that of Italy prevails, it follows that the son of a British subject may be called upon to serve in the army from eighteen to twenty-one, when he can become a British subject and discharge himself.

It would certainly seem fairer that the youth should have the option of choosing his nationality when he is called upon to perform the duties of a native. It is obviously an anomaly that a man should be considered old enough to be a soldier, but not old enough to decide whether he would be a citizen.

This anomaly is obviated by the French law.

⁷ In April, 1866, M. Rosario Messina claimed British protection in Sicily as a naturalized Maltese. The Italian authorities denied his British nationality, asserting that his naturalization applied only to the island of Malta.

He was informed that his naturalization could not protect him against the law of his native country; the exception of this rule being found in cases in which the country of the original allegiance allows her subjects to put off their allegiance and become the subjects of another country, which was not alleged to be the law of Italy.

In May, 1867, Mr. Elliot requested instructions as to the liability of Messrs. Hall and Hoare, and other British subjects, to contribute to a forced loan levied on mines, and other undertakings in which they were associated with Italians.

⁸ Mr. Elliot was instructed that under the fifteenth article of the treaty of commerce, British subjects could claim exemption from such loans being levied on dividends payable to them personally, but they could not claim exemption from loans assessed on the value of the mine or other concern in which they were collectively engaged with Italian subjects who were legally liable to it.

MEXICO.

Earl Russell to Mr Scarlett.

FOREIGN OFFICE, June 1, 1865.

⁹ "SIR: I have received your dispatch No. 29, of the 23d of March, requesting to be furnished with instructions as to the nature and amount of protection which you should afford to naturalized British subjects in Mexico, and I have now to state to you, for your information and guidance, that the rule laid down in¹⁰ Lord Palmerston's circular of January 8, 1851, is only applicable to persons holding certificates of naturalization

¹ Marquis d'Azeglio; November 28, 1864. ² To Marquis d'Azeglio; February 6, 1865. ³ Mr. Rickards, No. 15; March 1, 1865. ⁴ Marquis d'Azeglio; February 16, 1865. ⁵ To Count Maffei; February 26, 1865. ⁶ Marquis d'Azeglio; April 4, 1865. ⁷ Messrs. Walton and Bubb; April 28, 1866. ⁸ To Sir A. Paget, No. 3; September 5, 1867. ⁹ To Mr. Scarlett, No. 43. ¹⁰ Home Office, May 17, 1865.

granted after that date, and that persons holding such certificates are not to be held entitled to the same rights and capacities in Mexico as a natural-born British subject.

"The protection to be accorded in virtue of Lord Clarendon's circular of May 1, 1854, applies merely to the right of sojourn and of locomotion, but not to protection generally in regard to business pursuits in which naturalized British subjects may be engaged.

"I am, &c.,

(Signed)

"RUSSELL."

A question was raised in 1865 as to the liability of British subjects in Mexico to serve in the police and national guard.

¹ Under the advice of the law officers, Mr. Scarlett was instructed that they could properly² be called upon to serve in the police, or to pay a tax for exemption, but not in the national guard, which might be used for active military service.³

⁴ In May, 1865, Mr. Scarlett forwarded a copy of a decree recently published in Mexico, by which the illegitimate children born of foreigners and Mexican women, as well as those foreigners who may acquire landed property in Mexico, are to be considered as Mexican subjects.⁵

He was instructed that "the decree respecting illegitimate children seemed to furnish no reason for remonstrance from foreign governments, except, perhaps, so far as it extended to the illegitimate children born of Mexican women in foreign States ('dentro ó fuera del territorio del Impero,') a matter, however, of little practical importance."

"The decree as to foreigners acquiring landed property should be protested against in so far as it was made retrospective, and that time should be allowed to such aliens to determine whether they would retain their property, and to enable them to dispose of it without injury or loss accruing from this *ex post facto* law.

"With regard to its prospective operation, though it would be severe on foreigners, especially if the words '*propiedades territoria*' extend to shares in mines and leases of land and houses, yet it was within the competence of the Mexican government to pass such a law."

⁶ Mr. Benjamin Crowther, a British subject who had served in the army of the so-called Confederate States, having applied to Mr. Scarlett for protection, Lord Russell instructed Mr. Scarlett in November, 1865, that "a British subject who has neither been enrolled as a citizen nor naturalized in America, ought not, on the ground of his having served on either side during the civil war, to be deprived in a third country like Mexico of all British protection."

⁷ M. Saviñon, a Mexican by birth, having claimed British protection as a British naturalized subject, Mr. Scarlett's conduct in refusing it to him in Mexico was approved November, 1865.⁸

MONTE VIDEO.

See dispatch from Mr. Canning to Mr. Vice-consul Dale, December 20, 1842, previously cited.

NETHERLANDS.

⁹ In 1861 a case arose in which the Dutch government claimed the military service of Daniel Swan, a British subject born in Scotland of British parents and subsequently domiciled in the Netherlands.

It appeared that the existing Dutch law was in favor of the claim of the Dutch government; but a clause was proposed to be added to a militia bill then before the States General which, if liberally construed, would suffice to provide for the exemption thereafter of British subjects similarly situated.

¹⁰ The clause introduced into the militia bill by the Second Chamber of the States General was as follows: "A foreigner shall not be considered an inhabitant if he belongs to a State where a Dutch subject is not liable to compulsory military service, or where the principle of reciprocity is received with respect to liability for service."

¹¹ Some doubt having been expressed whether, under this clause, British subjects were exempt, the Dutch Government addressed a note to Sir A. Buchanan on the 26th of April, 1861: "Il a été décidé qu'aussi longtemps que les sujets Néerlandais établis dans la Grande Bretagne, qui ne sont pas naturalisés sujets Britanniques, y seront effectivement exempts du service militaire, soit en vertu de la coutume ou des dispositions administratives, soit en vertu d'actes législatifs spéciaux, les sujets de Sa Majesté

¹ Law officers, May 22, 1865. ² Law officers, June 20, 1865. ³ To Mr. Scarlett, No. 50; June 26, 1865. ⁴ Queen's Advocate; June 9, 1865. ⁵ To Mr. Scarlett, No. 51; June 26, 1865. ⁶ To Mr. Scarlett, No. 83; November 1, 1865. ⁷ Queen's Advocate; November 7, 1865. ⁸ To Mr. Scarlett, No. 2; November, 1865. ⁹ Sir A. Buchanan, Nos. 19, 23, 31, 32, and 33. ¹⁰ To Sir A. Buchanan, No. 34; July 13, 1861. ¹¹ Sir A. Buchanan, No. 77; August 28, 1861.

Britannique jouiront, également dans le Royaume des Pays Bas à partir de la mise en vigueur de la dite nouvelle loi, du bénéfice de la disposition de l'Article 15, qui exempte, à titre de réciprocité, les étrangers établis dans le Royaume de l'obligation de satisfaire à la militaire."

A clause was at the same time introduced into the militia bill, exempting from the conscription the absent sons of residents who were not Netherlands' subjects, thereby preventing the recurrence of a case like that of Swan.

¹ In the instructions addressed to Sir A. Buchanan, Lord John Russell observed: "There is no practical liability imposed on aliens in England to serve in the militia, inasmuch as the militia ballot is not in fact resorted to; even their theoretical liability thereto is a matter not free from legal doubt; and they are under no liability at all to compulsory military service in the army."²

NORWAY.

By the Norwegian military law of 1857 "foreigners who have acquired a fast domicilium in the country" are rendered liable to military duty.³

A case occurred in 1861 in which Mr. Walter Foreman claimed British protection against the conscription, and he was advised to try the question before the Supreme Court as provided by the law of 1857.

If a convention existed British subjects would be exempt by the express terms of the law; but in the absence of such a convention they could only appeal to the principles of equity, and ask for exemption on the ground that Norwegians were not subjected to any such military service in England.

PERSIA.

Lord Palmerston to Mr. Sheil.

"SEPTEMBER 4, 1850.

"The principles upon which, as stated in your dispatch No. 87, of the 22d of July, you are in the habit of acting, in regard to granting passports and affording protection to natives of India, appear to me to be correct. The only question would be whether children born in British India of parents subjects of the Shah, can properly be placed under British protection while resident in Persia.

"In Europe the international law would be against such an arrangement. Children born in England of parents of subjects of a foreign state would be entitled to be considered as British subjects everywhere but in the country to which their parents belong, always assuming that the law of that country considers children born to native subjects while out of the country to be as much native subjects as if they had been born in the country.

"But though that would be the international rule in Europe, yet, considering the different and peculiar habits and practices of Asia, it seems to me that, considering that all persons born in British India, of whatever parents, are entitled to be regarded as British subjects, so far as concerns any privileges and advantages which attach to that character within the British dominions, it would be fair and right to extend to such persons, even in Persia, the benefits of being placed under British protection; and especially if they had resided in British India for any time, so as to have been practically domiciled therein."⁴

Lord J. Russell to Mr. Alison.

"FOREIGN OFFICE, August 25, 1860.

"SIR: I have had under my consideration Sir Henry Rawlinson's dispatches No. 50, of the 29th of March, and No. 57, of the 11th of April last, inclosing a register of persons enjoying, and claiming to enjoy, British protection in Persia, and requesting definite instructions for his guidance in regard to what constitutes the right of a person to be considered a British subject, and to claim British protection in Persia.

"It does not appear that the Persian government has actually raised any objections, or that any case has arisen urgently calling for a decision as to the nationality or right to protection of any individual or class of persons; but as Sir Henry Rawlinson appeared to apprehend that difficulties would arise, and desired to be instructed beforehand what course he was to adopt in each case, as and when it might occur, I have to observe—

"First, that I am ignorant as to what is the course adopted on the points in question

¹ Sir A. Buchanan, No. 34; July 13, 1861. ² To Sir A. Buchanan, No. 18; July 29, 1861. ³ Mr. Crowe, Nos. 48 and 49; November 2, 1861. Mr. Crowe, No. 2; March 15, 1862. ⁴ To Colonel Sheil, No. 82; September 4, 1850.

by the other European governments having diplomatic relations with Persia, more particularly France and Russia; and having regard to Articles IX, XI, and XII of the treaty of March 4, 1857, as well as to the necessity of not conceding in practice to Persia more than is conceded to her by these powers on the subject in question, it is impossible for me to furnish you with definite instructions on this head.

"Secondly, I have to point out to you the impracticability of following out strictly, in relation to Persia, or any other Mahometan power, the principles of international law prevailing between Christian powers, so far as regards nationality and the right to protection. This impracticability is abundantly apparent from Sir Henry Rawlinson's dispatch No. 57 of the 11th of April, in which, whilst insisting upon the propriety of conceding, as it were, a reciprocity in point of principle to Persia in the matter of national *status*, he nevertheless suggests, in particular instances, doubtless on strong grounds of policy, the propriety of entirely disregarding or departing from any such principle in actual practice, as, for instance, in the case of the Masulipatan Newal referred to at No. 10, Class VI, in the list inclosed in his before-mentioned dispatch.

"Thirdly, I have to state to you that no new rule or practice, as to the extending or limiting the application of the existing system as to British protection, ought to be adopted, unless it be made common to other powers, especially France and Russia; no such new rule or practice should be retrospective; and no person now enjoying British protection should be deprived thereof by the application or operation of any such new rule or practice.

"With respect, moreover, to the class of cases particularly adverted to by Sir Henry Rawlinson, namely, the children of Persian fathers born in the Queen's dominions and afterward returning to Persia, I have reason to believe that in Turkey such persons habitually enjoy British protection, unless, indeed, they act in such a manner as to forfeit the right thereto, and to show that they have 'elected' the Turkish nationality of their fathers; and I have to state to you, that I see no reason to depart from the instructions laid down on this head by Viscount Palmerston in his dispatch No. 82, of the 14th of September, 1850, to Lieutenant-Colonel Sheil.

"Subject to the above remarks, and considering the question apart from all considerations of usage, policy, or expediency, but exclusively and strictly with reference to the principles of international law prevailing amongst Christian nations, I have to state to you that a child of a Persian father, born in the Queen's dominions and returning to Persia, will not, whilst in Persia, be entitled to British protection, if (as stated) the law of Persia considers him a Persian subject by reason of his Persian descent; and on this principle Syud Abdullah could not, whilst he remained in Persia, be claimed, or claim to be treated there, as a British subject. Although, therefore, this would be the correct rule of international law, yet, as it has not been hitherto acted on in Persia, I think it very inexpedient that it should now be made a rule of English procedure there, unless it is also made common to all other European nations, and especially France and Russia.

"You will be guided by what I have stated above, when called upon to interfere on behalf of persons having a claim to British protection.

"I am, &c.,

"J. RUSSELL."¹

A correspondence took place in 1862 respecting the right of the British consul-general at Bagdad to afford protection to the children of a person named Ali Agha, who was born in India, but was of Persian descent, the Persian government having asserted that the children ought to be placed under the protection of the Persian consul at Bagdad.²

Mr. Alison was instructed that the British consul-general was authorized upon the principle of the law, and warranted by the usage applicable to the subject, to take under his protection the sons of Ali Agha while they continued resident at Bagdad.³

In 1867, the British resident at Bushire raised a question as to the nationality of the grandson of a British Indian subject born in Persia.

Mr. Alison was instructed that such a person was a British subject by the British statute law, and as such entitled to the good offices of British authorities; but in the case where the father had been domiciled, and the son resident in Persia, it was not reasonable to claim the latter as a British subject, so as to withdraw him from the operation of the laws of his parent state.⁴

PERU.

In 1851, Mr. Vice-Consul Nugent requested to be informed whether he was to register as British subjects the children of British residents born in Peru, and whether children so registered, born of a Peruvian mother, were exempt from conscription.⁵

Mr. Alison, No. 64. ² Mr. Alison, No. 184; October 26, 1862. ³ To Mr. Thomson, No. 4; December 31, 1862. ⁴ To Mr. Alison, No. 15; November 12, 1867. ⁵ From Mr. Nugent; February 1, 1851. To Mr. Adams, No. 6; August 23, 1851.

Her Majesty's chargé d'affaires was directed to furnish Mr. Nugent with instructions on the latter point founded upon those addressed to him on the 17th of February, 1848.

These instructions were substantially the same as those given to Mr. Vice-Consul Dale, (*vide ante*.)

PORTUGAL.

"The Earl of Aberdeen to Lord Howard de Walden.

"FOREIGN OFFICE, June 10, 1843.

"MY LORD: I have received your lordship's dispatch No. 111, of the 25th of May, stating that you had informed the Portuguese minister for foreign affairs that Her Majesty's government cannot for an instant admit the right claimed by the Portuguese government to consider as Portuguese subjects all persons born in Portugal, notwithstanding that they may be the issue of foreigners residing in that country.

"I think it necessary for your information to put you in possession of the opinion of the Queen's advocate-general upon several cases which have arisen in foreign countries, and in which the right referred to in your dispatch has been questioned.

"The substance of that opinion is, that although by the statute law of this country all children born out of the allegiance of the King, whose fathers, or grandfathers by the father's side, were natural-born subjects, are themselves entitled to enjoy British rights and privileges while they are within British territory, yet the effect of British statute law cannot extend so far as to take away from the government of the country in which those persons may have been born, the right to claim them as natural-born subjects, at least so long as they remain in that country.

"By the common law of England, all persons born within the King's allegiance, whether the children of British subjects or of foreigners, are deemed to be natural-born subjects of the Crown of England; and if the law of any foreign state upon this point be the same as the English law, and if such foreign state places persons born within its territory upon the same footing as its own subjects or citizens, the government of that state has the right to exact the service of a subject from such persons, even if they may have been the children of foreigners, at least whilst such children remain in the country of their birth.

"It may be necessary that I should add that the children or grandchildren by the father's side, of natural born-British subjects, born in any other country than Portugal, are entitled to be protected by you, in Portugal, as natural-born subjects of the Crown of Great Britain; but the children of British fathers born in Portugal cannot be protected by you against the operation of the laws affecting the subjects of Portugal, unless the laws of that country withhold from the child of a foreigner the rights of a Portuguese subject."

PRUSSIA.

In reply to inquiries from Lord Bloomfield,¹ Lord Clarendon furnished him with the following instructions in 1855:

"1st. That a woman, a British-born subject, who has married a foreigner, puts on the status of her husband, and during the continuance of that coverture is not entitled to claim the protection of Her Majesty's legations abroad.

"2d. The same woman, on becoming a widow, is entitled to re-assume the character of a natural-born British subject; but her children by her alien husband, if born abroad, follow the nationality of their father, except that by virtue of the 3d section of the 7 & 8 Vict., cap. 66, they are made capable of taking any estate, real or personal, by devise or purchase or inheritance in England.

3d. As already stated, the mother, whilst under coverture, follows the condition of her husband, and is an alien; but the children, as well during as after the coverture, are entitled to the privileges conferred by the 3d section of the 7 & 8 Vict., cap. 66.

"4th. During coverture by an alien husband the mother cannot demand a British passport. When 'discouverte' she may demand one. The children, however, are aliens and cannot demand passports as British subjects either during or after coverture."

In 1862, Mr. Crossthwaite,² Her Majesty's consul at Cologne, requested to be informed whether, he having been naturalized as a Prussian subject, his sons were liable to the Prussian conscription.

It was decided that the sons of a naturalized Prussian subject (owing allegiance to

¹To Lord Bloomfield, No. 249, August 11, 1865. ²Law officers: November 5, 1862.

Her Majesty) who are between the ages of 17 and 25, and are resident in Prussia would be compellable to serve in the Prussian army.

In 1865 it was decided that a M. Renkewitz,¹ a person born in the British colony of Tobago, of a Saxon father and a Danish mother, and who had not resided in British territory since he was seven years of age, might properly receive a British passport from the Berlin embassy.

In October, 1867, the Prussian chargé d'affaires, with a view to the controversy between the Prussian and United States Governments, made an inquiry as to the liability to serve in Her Majesty's army and navy of British subjects who, having emigrated to a foreign country and become naturalized citizens of that country, subsequently return to their native land.

Count Bernstorff² was informed "that no practice has prevailed in England since the peace of 1815, which has any bearing on the question of the treatment in Prussia of these subjects of the King of Prussia, liable to military service, who, after they have emigrated to a foreign country, and been naturalized there, come back again to Prussia, inasmuch as the practice in England has always been, both before and since the peace of 1815, to recruit the royal army by voluntary enlistment.

"On the other hand, the militia of the counties which used to be called out by ballot has ceased to be so called out since 1829, and on the last occasion when the militia was embodied, during the Russian war in 1854, the quota of each regiment was furnished by volunteers. There has thus been no opportunity for a tacit practice to grow up either in regard to the army or the militia, under which any privilege of exemption from the liability to military service should become established in Great Britain in favor of those subjects of the Queen who, after they have emigrated and been naturalized abroad, have returned to Great Britain.

"With regard to the royal navy, the same observations apply, as the practice of impressment has been allowed to fall into desuetude, and the royal navy has been for some time recruited by voluntary enrollment."

RUSSIA.

In 1857 Madame von Essen applied to Lord Wodehouse,³ at St. Petersburg, for a British passport, to enable her to be recognized as a British subject by the Russian authorities, she being the widow of a Prussian who had been naturalized in Russia.

Lord Wodehouse was instructed "to grant her a passport if she can show that she was a natural-born Englishwoman, and that she forfeited upon the death of her husband the rights she acquired in Russia as the wife of a naturalized Prussian subject; but if she did not forfeit those Russian rights, you will inform Madame von Essen that she cannot under such circumstances be provided with a British passport, more especially as she appears to have no intention of leaving Russia."

The Queen's advocate remarked, in regard to this case, that there was no law as to the right of a British-born subject to a passport, and that it would be very inexpedient to lay down any inflexible rule in such matters. The primary intention and use of a passport was for traveling purposes, and it was for the secretary of state to give such directions from time to time as he might think fit as to the grant of passports in special cases, having regard to the conditions as to domicile and residence in a foreign country, under which such applications were made.

Shortly afterwards Consul-General Mansfield⁴ inquired whether a Polish lady married to an Englishman could legally be entered in her husband's *passport de séjour* as a British subject. He was told that during marriage she became entitled to the *status* and civil rights of her husband, and consequently to the protection of the British government as a British subject.

In 1862 a question arose as to the *status* of British Jews in Russia.

Her Majesty's ambassador⁵ was instructed that, having regard to the language of the treaty between Great Britain and Russia of 1859, and to the facts stated with reference to the legal *status* of Russian Jews in their own country, Her Majesty's government would not be justified in claiming exemption for British Jews in Russia from the disabilities to which Russian Jews are there liable by law. The effect of the first and eleventh articles of the treaty was to place British subjects on the footing of Russian subjects before the law, each class being alike, and one not more than the other amenable to all general laws applicable in like cases. Russian subjects, being Jews, incurred certain disabilities, and the equality intended and provided by the treaty was not infringed by British subjects who are Jews, whilst residing there, also sharing the same disabilities. In 1865 the British factory at St. Petersburg wished to obtain a re-

¹December 4, 1865. ²To Count Bernstorff; November 15, 1867. ³Lord Wodehouse, No. 12; January 3, 1857. Queen's Advocate; January 15 and 21, 1857. To Lord Wodehouse, No. 69; January 21, 1857. ⁴Consul-General Mansfield, No. 16; February 24, 1857. ⁵To Lord Napier, No. 105; May 15, 1862.

vision of the sixth section of the Russian naturalization law relating to children born after their parents had adopted Russian allegiance, with reference especially to the fact that previously to 1862 no alien could carry on business in Russia without being naturalized, and that the new law of 1864 made no provision for the denaturalization of persons who had assumed Russian nationality before it was passed.

Sir A. Buchanan¹ was instructed to assist the factory as far as he could.

At the same time he was warned that it was impossible to press upon the Russian government the law of England as a complete reason for the desired concession.

"The present law² of England would allow a Russian merchant to carry on his business in Great Britain without being naturalized, and so far the doctrine of reciprocity might be made available: but, on the other hand, the law of England considered that allegiance, whether acquired by birth or by naturalization, is indelible, except, perhaps, in the case of a conflict of duty between the obligations of the naturalized foreigner to the state to which he originally belonged and Great Britain.

"A Russian could exercise wholesale and retail trade in England on the same footing as a British subject, with the exception that he could not lease land or house for a longer term than twenty-one years without being naturalized. A Russian could not,³ according to the theory of the law, put off the allegiance acquired by naturalization, though practically he would do so if he returned to his own country, except, perhaps, in a case of war between Russia and England."

In March, 1867, Mr. George Wolff⁴ applied to Sir A. Buchanan for a British passport. Mr. Wolff was born in England of a Hanoverian father and English mother, had resided in England until he was eleven years of age, and had never claimed Hanoverian nationality.

Under these circumstances, Sir A. Buchanan was told that he might give notice to the Russian authorities of Mr. Wolff's name being withdrawn from the family passport, and give him a separate passport as a British subject.

SPAIN.

Her Majesty's Consul at Cadiz⁵ having requested instructions in 1841 as to the claims of the sons of British subjects born in Spain to exemption from the conscription, he was informed that as British law considered all persons born in Great Britain to be British subjects, Her Majesty's government could not urge the claims of persons born in Spain to British protection as against the laws of that country.

Lord Aberdeen, however, pointed out that by the Spanish constitution of 1837 it was declared that all persons born in Spain were Spaniards, but when that law was passed it was interpreted by the Spanish government to mean that such persons have the right of being admitted to the privileges of Spanish subjects *at their option*, and that if it was thereby meant that the children of aliens born in Spain were aliens unless they declared their option of becoming Spaniards, it might be contended that the sons of British parents so situated, who had not made such a declaration, remained British subjects, and, as such, exempt from conscription.

By article 24 of the Royal Decree⁶ of 17th November, 1852, it was provided that persons domiciled or traveling in Spain, as well as their sons, who had not chosen Spanish nationality, should be exempt from military service, with the exception of those whose parents were born in Spanish territory.

In 1856 a question arose as to the interpretation of this law, and certain persons, grandsons of native British subjects, claimed exemption in the face of it.

The case was referred to Lord Clarendon, who decided that the claim was inadmissible.

In 1861, however, it appeared that Her Majesty's consuls in Spain still continued to claim to protect the grandsons of British subjects from military service, and Lord Russell⁷ then gave instructions that they should desist from doing so.

Further correspondence passed between Sir J. Crampton and Lord Russell⁸ on this subject in 1862, and the following dispatch was addressed to Sir J. Crampton (July 9, 1862):

"I have to state to you that with regard to the general question I have nothing to add to the instructions conveyed to you in my dispatch No. 164, of the 17th December last, to which Her Majesty's government adhere.

"With respect to the particular cases of Lieutenant Arguimban and his son Mr. Joseph Arguimban, and to any other cases which may come under the same category,

¹Sir A. Buchanan, No. 21. ²Queen's Advocate; January 31, 1865. ³See, however, previously as to British naturalization, the certificates of which, as at present granted, are canceled by absence from England without license beyond a certain specified time. ⁴Sir A. Buchanan, No. 80; March 12, 1867. ⁵Consul Brackenbury, Nos. 6, 9, 9, 11, 1841. To Consul Brackenbury, No. 4; November 5, 1841. ⁶Lord Howden, No. 96; March 25, 1856. ⁷To Sir J. Crampton; Dec. 11, 1861. ⁸Sir J. Crampton, No. 197; May 2, 1862. To Sir J. Crampton, No. 139; July 9, 1862. Law officers; July 7, 1862.

I am advised that they should be determined by the domicile of the parents at the time of the birth of the children within the territories of the Crown of Spain. If at the time of the birth of Lieutenant Arguimban, his father was not only a natural-born British subject, but legally domiciled in the British dominions, I am of opinion that Lieutenant Arguimban himself was at the time of his birth a British subject, owing permanent allegiance to the British Crown, and entitled to British protection. If, on the contrary, his father was then domiciled in the dominions of the Spanish Crown, he became a Spanish subject, and is not entitled to claim British protection against any obligations resulting from his Spanish allegiance, although by an English statute he may be also entitled to the privileges of a natural-born British subject in Great Britain.

"The same observations apply to the case of Mr. Joseph Arguimban, whose position is likewise dependent on the allegiance and domicile of his father at the time of his birth.

"The fact of Lieutenant Arguimban and one of his sons being officers in the royal navy tends *prima facie* to show that the domicile of Lieutenant Arguimban, if originally in England, did not afterwards cease to be so; but even this point would not be conclusive if that gentleman has resided for a long time in the Spanish dominions, and I am advised that no length of service in the army or navy of Great Britain would be material for the purpose of the present question if the allegiance and domicile of the person engaged in such service were originally Spanish.

"I should add that, even in the case of persons owing permanent allegiance to the British Crown, but domiciled and resident in Spain, the claim to exemption from military service in Spain cannot justly be extended on their behalf to any services required for the legitimate purposes of internal defense only, and which do not involve any act at variance with the duties of their British allegiance."¹

SWITZERLAND.

Lord Palmerston to M. Drouey, president of the Swiss Confederation.

"OCTOBER 16, 1859.

"The undersigned has the honor to acknowledge the receipt of the note addressed to him in the name of the Federal Council in Switzerland by M. Drouey, president of the Confederation, requesting to be made acquainted with the provisions of the English law as regards the cases in which foreigners lose their rights of nationality.

"In reply, the undersigned has the honor to inform M. Drouey that he is not aware of any case in which a British-born subject can lose his right of nationality unless he should be deprived of it by an act of Parliament.

"It is well established that a natural-born British subject cannot put off his allegiance to the British Crown by any act of his own, not even by swearing allegiance to a foreign power; and though it is not illegal for a British subject to contract engagements with a foreign power with the license of the British Crown, yet such engagements do not affect his national status according to the English law, and the license so given may be revoked at any moment.

"But though a British subject cannot get rid of his national character, he may so misconduct himself, either by committing piracy, or in other ways, as to forfeit all claim to the protection of the British government."

In 1863 the Swiss government claimed to include in the conscription, at Geneva, two brothers, named Fournier, born in England, but whose father had been naturalized subsequently to their birth as a citizen of Geneva.

As the young men were both of full age, and had done nothing to forfeit their British character, Her Majesty's minister at Berne was informed that they came within the meaning of the term "British subjects" in the sixth article of the treaty of 1855, and, as such, were exempt from Swiss military service.²

In 1865 a question arose whether an English company, (the European Central Railway Company,) whose direction and agent was located in the canton of Tessin, was entitled to the support of the British legation.³

Admiral Harris was instructed "that this English company has not forfeited its right to the protection of the British legation, because in the act of concession the technical domicile of the company ('la direction technique du chemin de fer') is to be considered as being in the canton where the board of administration of the company is situated. The distinction between different kinds of domicile is familiar to all jurists. The domicile which incorporates a foreign citizen into the state in which he is

¹ The tenor of this dispatch seems inconsistent with the doctrine previously held by the British government, as it makes the nationality of the son to depend on the domicile of his father instead of the place of his own birth. It is to be presumed that the instruction was framed with reference to the peculiar law and usage of Spain, and was not intended to lay down any general principle applicable to other countries. ² To Admiral Harris, No. 16, April 22, 1863. ³ To Admiral Harris, No. 2, November 20, 1865.

resident is wholly distinct in its character and consequences from the domicile which is assigned by the state to a foreign subject with relation to certain legal acts or liabilities. Such a domicile is for the purpose of founding jurisdiction in the event of legal proceedings being taken, either by him or against him in the country in which he is resident. The domicile specified in the concession for the company is of this nature, and falls under this category; but it does not affect the right of the company to the intervention of its government for the purpose of preventing an act of injustice being done to it by the foreign government. The intervention, however, of the British legation in Switzerland should be strictly confined to such a case, and should not attempt to interfere with the ordinary course of the municipal law in its operation upon the rights and liabilities of the company."

In 1866 Mr. J. G. Roch protested against being called upon for military service in Switzerland as a Genevese.¹

Mr. Roch's grandfather was a Genevese by birth, having been born in a territory ceded by Sardinia to Geneva in 1816 by a treaty, one of the conditions of which was that those so born should, being Christians, be considered as Genevese. By the law of that canton the national character is inalienable, and extends to the grandchild.

As Mr. Roch lived and was domiciled at Geneva, Admiral Harris was informed that the claim to exemption could not be put—the English law on the same subject being duly borne in mind—upon the high ground of strict right. The claim could only be preferred upon the lower ground of usage and convenience.²

TUNIS.

Lord Palmerston to Sir T. Read.

"JANUARY 16, 1840.

"SIR: Mr. Ancram, in his dispatch No. 14, of the 2d of June, 1838, reported the case of a young Maltese girl, Grazia Abela, the wife of a Maltese, who had been persuaded to embrace the Mahomedan religion, but who afterward desired to recant. Mr. Ancram, it appears, made thereupon an application to the bey that the girl should be restored to her husband, but the bey refused to restore her. Since that time I have heard nothing further from Mr. Ancram or from yourself on this subject; and I would hope that the bey, on further reflection, may have been induced to give up the girl. But if that should not have been the case, I have to instruct you to state, by a written note to the bey, that all the subjects of Her Majesty are free to change their religion, if they think fit to do so, and the British government never interferes with the conscience of British subjects; but that every person who is born a subject of the British Crown must, by the law of England, continue, during life, to owe allegiance to the sovereign of Great Britain; and, on the other hand, every such person is entitled, during life, to the protection of the British Crown.

"The woman in question, having been born in Malta, is a British subject; and, though she is at liberty to embrace the Mahomedan religion if she shall think fit to do so, she cannot thereby cease to be a British subject, and she is as much entitled to British protection as if she had remained a Christian. The law of Tunis may be different; but the British government has nothing to do with that law, and Great Britain never can permit the laws of any foreign state to interfere with the indissoluble connection which binds a British-born subject to the British Crown.

"Moreover, marriage is, by the law of England, a tie which can only be dissolved by an act of the British legislature, and Her Majesty's government never can permit any foreign government to assume that a marriage legally contracted between two British subjects can be dissolved by the circumstance that one of these parties has changed their religion.

"Her Majesty's government, therefore, expect that this Maltese woman shall be placed under your protection, in order that she may have an opportunity of freely choosing whether she will return to her husband and her country, or remain where she is.

"I am, &c.,

"PALMERSTON."

In 1865 Mr. Wood reported that he had sent to Malta a Maltese family consisting of a widow and minor children, who had been induced by distress to embrace the Mahomedan religion.

As the children of a Maltese father, during their minority, remained British subjects, and it was assumed that the application made for their removal to Malta had been at the instance of their next relation or friend, Mr. Wood's proceedings were approved.³

¹Mr. J. G. Roch, March 16, 1866. ²To Admiral Harris, No. 21, March 29, 1866; Queen's advocate, April 14, 1866; Queen's advocate, May 8, 1866; Queen's advocate, May 21, 1866. ³Queen's advocate, January 13, 1865.

TURKEY.

The question as to the protection of British subjects in the East does not come within the scope of this memorandum, but it would require careful attention in case any alteration of the present law of allegiance were contemplated.

The following instruction was addressed, in 1849, to Mr. Murray respecting the amount of protection to be granted, in Egypt, to aliens who had obtained letters of naturalization in England:¹

"Your inquiry arises out of three questions which have been put to you by Mr. Walne, Her Majesty's consul at Cairo; and I will give answers to those questions.

"The first question is, whether Greek houses in Egypt, being branches of establishments belonging to Greeks who have been naturalized in England, are entitled to protection?

"Upon this point I have to answer that those members of such houses who are not naturalized British subjects cannot claim for themselves nor for their branch house British privileges, merely because another member of the house residing elsewhere has been naturalized in England.

"The second question is, whether British protection is to be extended in Egypt to subjects of the kingdom of Greece who have obtained letters of naturalization in England and have returned to the Levant?

"The answer to this is, that, if these persons have been legally naturalized in England, they are entitled everywhere but in the kingdom of Greece to the privileges of British subjects.

"The third question is, whether Greek rayahs, resuming their residence in the Ottoman territory, after having obtained naturalization in England, are to be protected?

"The answer is, that these persons cannot, within the country of their natural allegiance, that is to say, within the Ottoman Empire, claim to be considered British subjects, because natural allegiance in the country of a man's birth overrides privileges obtained by naturalization elsewhere."

In 1851 this instruction was modified as regards Mr. Cassavetti, a Greek naturalized British subject resident in London, and Her Majesty's consul-general in Egypt was instructed to afford to his branch establishments at Cairo and Alexandria the same protection as would have been afforded to the branch establishments of an English firm.²

A similar instruction was sent to Mr. Consul Brant in the case of Mr. Calimachi, a Greek, the agent, at Trebizond, of Mr. Mathew Schilizzi, a resident in London.³

In 1855 like protection was extended to Messrs. Bogni and Kotti, Greek agents, at Galatz, for M. Theologo.⁴

In 1856 Mr. P. Theologo was informed that his naturalization would not entitle him to protection in Turkey, he having been born in Broussa in Asia Minor.⁵

In 1858 protection in Egypt was refused to Mr. Giro, a native of Lemnos; but, in the following year, it was decided that, bearing in mind the peculiar relations between Egypt and the Porte, he might properly receive British protection in Egypt, unless the Egyptian authorities objected.⁶

In October, 1859, a question was raised as to the nationality of Mr. John Aslan, born at Cerigo, but who had not complied with the provisions of the Ionian law in order to constitute himself an Ionian citizen.

Eventually it was arranged that protection should be afforded to him until he had an opportunity of returning to the Ionian Islands and completing his naturalization there.⁷

In 1861 Mr. Sophocles Theologo was informed that his agent at Galatz was not entitled to personal protection for himself or his concerns; but that the interests he represented, as the agent of a naturalized British subject resident in London, would be entitled to such protection.⁸

In April, 1861, an application was made for British protection on behalf of the estate of a bankrupt, Mr. Rodocanachi, a native of Scio, who had been naturalized as a British subject in 1855.⁹

As his certificate of naturalization contained an express exception of "any rights and capacities of a natural-born British subject out of or beyond the dominions of the British Crown and the limits thereof," (the usual clause at that date,) and Mr. Rodocanachi was at Constantinople in no danger of molestation, Her Majesty's government refused to interfere.

In the case of Themistocles George Aslan, who claimed to have his declaration of part-ownership in a British vessel registered at the Cairo consulate in 1861, it was decided that the question of Mr. Aslan's right to have his declaration of part-ownership in a British vessel attested at the British consulate at Cairo depended not upon the terms of his letters of naturalization, nor upon the circumstance of his having or not having a

¹To Mr. C. Murray, consular, No. 13, November 17, 1849. ²To Mr. D. Cassavetti, February 22, 1851. ³To Mr. Brant, consular, No. 4, August 26, 1852. ⁴To Mr. Theologo, January 12, 1855. ⁵To Mr. P. Theologo, February 8, 1856. ⁶To Mr. Giro, September 7, 1858; to Mr. Muller, No. 2, February 14, 1859. ⁷To Mr. Colquhoun, consular, No. 36, December 9, 1850. ⁸To Mr. Theologo, November 11, 1861. ⁹Messrs. Wilson, Dodgshun, and Papayanni, April 2, 1861.

foreign passport, but upon the provisions of "the Merchant Shipping Act, 17 and 18 Vic., cap. 104, sec. 18." By that act persons who are naturalized by or pursuant to statute are rendered capable of being owners or part-owners of a British ship only if they "are and continue to be, during the whole period of their so being owners, first, resident in some place within Her Majesty's dominions, or second, if not so resident, members of a British factory or partners in a house actually carrying on business in the United Kingdom, or in some other place within Her Majesty's dominions." Mr. Aslan, it appeared, was not a person fulfilling the first of these conditions, but it did not appear whether he was or was not a member of a British factory, or a partner in a house actually carrying on business within Her Majesty's dominions. If he was, the application made by him to the British consul at Cairo ought to be complied with; if not, he was by law incapable of being owner or part-owner of a British ship, and the ship of which he was owner or part-owner could not be deemed to be British; in which case the consul ought not to attest his declaration.¹

The clause in Mr. Aslan's letters of naturalization excepting from the grant "any rights and capacities of a natural-born British subject out of and beyond the dominions of the British Crown and the limits thereof," was intended only to prevent the person thereby naturalized from claiming, by virtue of his naturalization, as against foreign governments while within their territories, the benefit of the *status* of a British subject. It was not intended to be applicable to the right and capacity of the person naturalized, (provided he fulfills the requirements of the Merchant Shipping Act,) to be and continue, while locally resident beyond the limits of Her Majesty's dominions, an owner or part-owner of a British ship, and to do, while there, all acts proper to be done by him in that character. Such a right is not one of which any foreign locality can be predicated, merely because the person entitled to it may happen to be residing abroad; it is in its nature essentially a British right, its subject being a British ship having its port of registry within the dominions of the British Crown, and, if locality was to be ascribed to it at all, it must follow the port or domicile of the ship, and not the residence of the owner.

In December, 1862, Mr. Sophocles Theologo was informed "that a foreign house, having foreign interests, although connected with the English house, and being conducted by foreigners and in a foreign country, cannot claim the protection of a British consul, except in so far as the direct interests of British subjects, apart from those of foreigners, are involved."²

In 1864 Sir E. Hornby was authorized to register Messrs. Cuppa as British subjects, reserving any rights of allegiance which might be preferred against them by the country of their birth.

These gentlemen were Ionians by birth, sons of an Ionian who had commanded, as a British naval officer, a scamparia or gunboat, in the war with France, and they claimed, accordingly, to be British subjects, under the act 13 Geo. II., cap. 3.³

In the case of M. Mavrogodato,⁴ in 1866, it was decided that "although in strictness a foreigner who is merely naturalized in Great Britain has no title to British protection abroad, the good offices of Her Majesty's representatives may as a general rule be properly extended to such persons elsewhere than in the dominions of the state to which they owe natural allegiance;" and that such claim as M. Mavrogodato might have to those good offices in the Ottoman dominions must be "subject to the determination of any question which may be raised by the Turkish government, arising out of his place of birth, and that if that question is raised M. Mavrogodato must be prepared to establish to his excellency's satisfaction that he forms one of a class of persons over whom the Porte has renounced its right of regarding them as its subjects, notwithstanding their birth in its territory."

VENEZUELA.

A question arose in 1851 whether the illegitimate children of British parents, born in Venezuela, were entitled to be registered as British subjects at Her Majesty's consulates.⁵

Sir John Dodson, then Queen's advocate, considered that such persons might be taken to be British subjects *for the purposes of registration only*, but that their claim to British nationality could not be asserted against an actual adverse claim of the Venezuelan government to treat them as natural-born citizens.

It having been pointed out to Sir John Dodson that this opinion seemed to be at variance with a report which he had previously made in the case of a Mr. Stratford, when he had stated that the illegitimate children of British parents born abroad were not en-

¹ Acting consul at Cairo, No. 25, May 30, 1861. Law officers, August 9, 1861. ² To Mr. Theologo, December 24, 1862. ³ Sir E. Hornby, No. 42; June 22, 1864. Law officers; July 23, 1864. ⁴ May 14, 1866. ⁵ Mr. Riddell, consular, No. 42; August 12, 1851. Queen's Advocate; January 19, 1852. Law officers; February 3, 1852.

titled to be considered as British subjects in foreign countries, Sir John Dodson replied that the question was one of much difficulty, in which the other law officers should be consulted.

This was accordingly done, and on the 3d of February, 1852, the law officers advised that illegitimate children born abroad, of English parents, are not British subjects, and therefore not entitled to British protection. By the common law children born abroad of English parents were not, except in certain special cases, English subjects. Acts of Parliament have been passed to remedy this inconvenience, but these acts, from their particular purposes and wording, can only be held to apply to legitimate children.

During the discussion of the British claims on Venezuela, in 1865, the Venezuelan government objected to the insertion of certain claims in the British schedule, on the ground that the claimants were citizens of Venezuela.

In support of the principle on which this objection was based, they quoted at considerable length passages from Wheaton, Blackstone, Sir R. Phillimore, and other jurists, showing the doctrine of native nationality held by England.¹

With regard to the particular case of Venezuela, the foreign secretary stated, (July 27, 1865:) "Now, in this country it has been judged suitable, for many reasons, to establish that all that are born in its territory are Venezuelans. It has been thus declared in the constitutions that have ruled the country since 1821. In the long process of time which has elapsed, it has been understood that the fact of being born in Venezuela carries with it the obligation of naturalization. A controversy which originated with the Spanish legation in 1847 for pretending to include in the matriculation of subjects of Her Catholic Majesty persons born in Venezuela, although of Spanish parents, might be cited.

"During the war of five years, on an occasion which created difficulties, and to avoid others, the executive power deviated, in one single instance, from the common practice, that of the young man Alexander d'Empaire, and declared him exempt from military service, as a minor, being under the protection of his father, and not having signified his wish to become a citizen of Venezuela. But that resolution cannot be considered definite, for it is not given to the executive power to point out the sense of the constitution. The President understood it to be so, and mentioned it in his message to Congress in 1861, asking that a law should interpret the constitutional rule. Nothing was then resolved. The question was still undecided when the constituent assembly met in 1863; the government insisting for a termination, it pronounced itself in this manner in article 6 of the federal constitution:

"Venezuelans are: 1. All persons born, or who may be born, in the territory of Venezuela, whatever may be the nationality of their parents.

"2. The children of a Venezuelan father, or of a Venezuelan mother, born in other territories, who may fix their residence in this country, and shall express their desire to be considered as such."

"It therefore appears that there can be no doubt as to the meaning of the legislators, and if a more explicit declaration has been asked for, it is owing to its being considered that it should come directly from them."

On the 23d of October, 1865, Mr. Edwardes,² under instructions from Lord Russell, replied: "Her Majesty's government are of opinion that the general principles on which his excellency founds his particular position are sound; though it is to be observed that by treaty stipulation, and by long usage, one state may concede to the subjects of another privileges which are not accorded to its own subjects. Many circumstances may make such a usage not impolitic or unreasonable."²

"Her Britannic Majesty's government are, moreover, of opinion that when such usage is abrogated by the municipal law, ample time should certainly be given to the subjects of the state from whom the privilege is withdrawn to make up their minds whether they will remain in, or leave, the country in which this change in their former relation to it has been effected.

"M. Seijas will perceive, from the foregoing opinions, that although her Britannic Majesty's government offer no opposition to the change which the Venezuelan government desire to make in the position of children born to British subjects in Venezuela, they are far from admitting its power of retroaction.

"The undersigned, therefore, being unable to see how the solution of the question at issue can possibly affect the settlement of claims already pending, avails himself, &c."³

The Venezuelan government rejoined, on the 22d of November, 1865, that it was not a question of passing a new law, but of interpreting a principle which had been (with the exception of the French case previously referred to) maintained since the foundation of the republic.

In January, 1866, Lord Clarendon⁴ instructed Mr. Fagan, "that Mr. Edwardes appears to have stated the matter very properly to the Venezuelan government. It seems clear that the new law ought not to affect the position of British claimants

¹Mr. Edwardes, No. 66; August 23, 1865. ²Mr. Edwardes, No. 89; October 25, 1865. ³Mr. Harrison, No. 5; December 9, 1865. ⁴To Mr. Fagan, No. 3, January 16, 1866.

whose claims had accrued previously to the passing of this law; and the argument that the law is not retroactive, but explanatory, is inadmissible.

"Previously to the passing of it, practice and usage had interpreted the law as treating the children of foreign subjects, though born in the Venezuelan territory, as foreigners. To pass a law now, explaining that the law had never meant to consider such persons as foreigners, is substantially to pass a retroactive law to the injury of foreigners."

In November, 1865, Mr. Edwardes¹ forwarded a list of claims admitted by the Venezuelan government. This list includes the claims of persons alleged to be British subjects, although born in Venezuela, and a note is appended to their names showing that these claims were admitted subject to their nationality being proved.²

Negotiations are now pending for the settlement of these admitted claims, together with any other claims not yet investigated, by a mixed commission, when the right of these Venezuelan natives to British nationality will again come under discussion.³

CHAS. S. A. ABBOTT.

FOREIGN OFFICE, *March 5, 1868.*

ADDENDA.

(A.)

OPINION OF MR. CALEB CUSHING.

RIGHT OF EXPATRIATION.

Citizens of the United States possess the right of voluntary expatriation, subject to such limitations, in the interest of the state, as the law of nations or acts of Congress may impose.

ATTORNEY-GENERAL'S OFFICE, *October 31, 1856.*

SIR: I have to apologize to you for having omitted to reply at an earlier day to your communication, inclosing extract from a letter addressed to Mr. Vroom, minister of the United States in Prussia, by the Count de Montgelas, minister of Bavaria at the same court, and requesting me to consider the question of law propounded by the Count de Montgelas.

The question is, "Whether, according to the laws of the United States of America, a citizen thereof, when he desires to expatriate himself, needs to ask either from the Government of the United States, or of the State of which he is the immediate citizen, permission to emigrate; and, if so, what are the penalties of contravention of the law?"

It might suffice, perhaps, for me to say that there is no provision of law on the subject in the Constitution of the United States, or in any act of Congress; and that, therefore, a citizen of the United States, desiring to emigrate, is free to do so, without express consent of the Government of the Union; and that no law of any one of the States forbids the citizen thereof to emigrate, or imposes any penalties on him if he do so without the consent of such State.

This naked statement, however, though a substantial response to the inquiry, leaves out of view some relations of the subject, which, in deference to the possible wishes of the Count de Montgelas, it may be desirable to expose.

In the popular discussions of the United States, it is common to assume that the theory of their political organization requires, and that their laws admit, unlimited right of emigration.

This impression is partly derived from the fact that the United States, having so recently by force made themselves independent of Great Britain, ideas of right, which belong to revolutionary epochs, still predominate over those of duty, which belong to the regular action of all political society, and the importance of which grows more and more apparent with every year's duration of the Union.

To justify the supposition of unlimited right of emigration, it is common to appeal to the provisions of the Constitution of the United States, and of its laws regulating the naturalization of foreigners. These provisions do, indeed, show that the encouragement of foreign emigration is a feature of the public policy of the United States, and suggest implication that, in the spirit of international equity, we shall concede to our own citizens a reciprocal faculty of emigration, and of foreign naturalization, involving abjuration of allegiance to the Union.

¹ Mr. Edwardes, No. 93; November 9, 1865. Mr. Edwardes, No. 97; November 22, 1865. ² Mr. Irving's memorandum; February 2, 1867. ³ To Mr. Fagan, No. 4; January 30, 1868.

Acting on these impressions, attempts have been made from time to time in the Congress of the United States to legalize the right of emigration; but, on all such occasions, careful scrutiny has made evident the fallacy of the popular assumption, and has caused the whole subject to be left, as it now stands, as a question of our public law, unsolved in its complete generality—but with elements of solution, which have not failed to strike the observation of many jurists and statesmen of the United States.

To begin: it is true, as the tenor of the question of the Count de Montgelas implies he presumed might be the case, that the conditions of citizenship of the United States and of any one of the States are not identical; that is to say, it may happen that by the laws of a given State a person shall be a citizen thereof, and still not be a citizen of the United States. Nor does it follow, because he is a citizen of a given State by the very letter of its laws, that therefore he is of every or any other State. Persons may be, and in fact are, citizens of the State of Massachusetts, that is, invested with all the rights, political and municipal, which its institutions can bestow, without being citizens of the State of Virginia, or of the United States. But the distinctions which exist in this respect are not very important in international relations; and so far as they are anywise material they will come up incidentally in considering the duties and the rights of citizens of the United States.

Neither in the Constitution nor in the laws of the United States is there any definition of citizenship. The Constitution, which is the organic law of the Union, confines the exercise of all the great functions of state to citizens, and some of these functions to natural citizens; and it empowers Congress to enact laws of naturalization. Such laws have been enacted, and provide in effect that any free white alien, after five years' residence in the country, and two years' intermediate declaration of intention to become a citizen, may become such on his making proof of good character, and abjuring, in certain prescribed forms, all foreign allegiance, and taking oath of allegiance to the United States. And many ordinary municipal rights are, by other laws, capable of being enjoyed by citizens alone: such as the ownership of merchant-ships, the command and in part the manning of such ships, and the purchase of public lands by pre-emption.

To this may be added, that in many of the States the right to own land within the same is by their laws restricted to citizens of the United States. But I repeat, citizenship, whether acquired by birth or by naturalization, is not a thing specifically defined in its elements, either by the Constitution or by the laws of the Union.

Nor is there in the Constitution or laws of the United States any general provision to define how the rights of citizenship may be lost, or its duties be made to cease, whether by one's own act or by that of the Government.

And in the codes of the States there is occasional confusion of thought, arising from the want of proper attention to the difference between the enjoyment of mere civil rights, the right of suffrage, and the right of citizenship as a political status of persons, independent of their sex, age, or condition. Thus women, minors, and some other persons, do not possess the right of suffrage in any of the States, although citizens of the United States, and it is possessed in some of the States by persons who are not citizens of the United States.

As to citizenship and its termination, though we do not find them defined by any law of the Union, still we may gather the prevailing thought of the nation on the subject, by inspecting the legislation of some of the States.

In truth, we must divide the people of the United States into two classes: those in the full enjoyment of all the rights of citizenship, and those deprived of some or all of those rights; and then we must distinguish between such of the inhabitants of the country as are citizens, and such as are subjects only, and whether capable or not of becoming citizens, yet not so at the present time. I allude, in the latter case, to the Indians who, in some of the States, are the subjects of the State in which they exist, but who are in general subjects of the United States; and to the Africans, or persons of African descent, who, being mostly of servile condition, are of course not citizens, but subjects, in reference as well to the respective States in which they reside as to the United States.

In the sequel of these remarks it will be seen that the distinction between citizens and subjects in the United States is material to the just appreciation of the question of the right of emigration in its domestic relations, and still more in its foreign relations, and especially as admonitory of candid consideration of the laws regulating emigration, which exist in some of the countries of Europe.

These are prefatory considerations. I proceed now to state how far limitations of the right of emigration are imposed in fact by the laws either of the Union or of individual States.

The Union, as already explained, has not as yet undertaken to formalize any general law, either of citizenship or of emigration. One of the States, Virginia, has done this; and its express legislation on the subject, though imperfect, is quite suggestive, and leads directly to important reflections.

The code of Virginia contains the following provisions :

"All free white persons born in this State, all free white persons born in any other State of this Union, who may be or become residents of this State, all aliens being free white persons naturalized under the laws of the United States, who may be or become residents of the State; all persons who have obtained a right to citizenship under former laws, and all children, wherever born, whose father, or if he be dead, whose mother shall be a citizen of this State at the time of the birth of such children, shall be deemed citizens of this State.

"2. Whensoever any citizen of this State, by deed in writing, executed in the presence of and subscribed by two witnesses, and by them proved in the court of the county or corporation where he resides, or by open verbal declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this State, and shall depart out of the same; such person shall, from the time of such departure, be considered as having exercised his right of expatriation, so far as regards this State, and shall thenceforth be deemed no citizen thereof.

"3. When any citizen of this State, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other State of this Union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another State, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this State.

"4. No such act of becoming the citizen or subject of a foreign state or sovereign, and no act under the second section shall have any effect if done while this State or the United States shall be at war with any other foreign power." (Revised Code, tit. fi.)

Without stopping to comment on the conditions of citizenship here laid down, let us attend to the conditions of its relinquishment. These are two, namely: 1. Solemn declaration of intention to emigrate, with actual emigration. 2. Residence elsewhere, that is, actual emigration from the State, and the assumption in good faith of citizenship in some other State of the Union, or of allegiance to a foreign state or sovereign.

But the rights thus defined are of the change of citizenship, which involves emigration; not of pure emigration. The law does not comprehend the case of subjects of the State.

And the rights accorded are with significant restriction: they cannot be exercised in time of war. That is, the legislator, while nominally admitting the general rights of citizens to emigrate, reflected that it would not answer to leave the right without such limitation, at least, as to deprive the citizen of the power to abstract himself from the public service in certain emergencies by emigration, or under the same emergencies to shelter acts of treason under pretenses of emigration.

Thus, in the very act of legalizing emigration, the State of Virginia declares expressly that the right is, in its judgment, subject to the paramount rights of the State.

How could it be otherwise? If the state owes protection to the citizen, does not the citizen owe service to the state? Above all, in a republican country, in which the state is but the congregation of the citizens, are not the interests of all bound up together into a unity of common interest, so that rights are but correlative to obligations? The assumption of the unlimited right of emigration would make of the inhabitants of a country a mere collection of individuals each pursuing blindly his own passionate or narrow view of his apparent personal interests, instead of an organized political society combining individual right with public power, and maintaining the true rights of individuals as well against individual wrong-doers as foreign foes, by means of the aggregate force of the state. But of this more hereafter.

To return to the actual laws of Virginia. These, in formalizing the right of emigration, impose restrictions upon it, and thus recognize the public right of restriction.

But other restrictions of the right are found in the laws of the same State.

A citizen of Virginia, it is clear, does not effectually cast off any private obligations of his, whether relating to person or property, by pretense of emigration. He may, it is true, be sheltered by the foreign jurisdiction, and thus enabled to evade legal obligations existing in the State of Virginia; but those obligations do not the less continue in force within that State until discharged by its laws. This doctrine comprehends citizens of that State *a fortiori* its subject.

But the more material question is of the obligations of citizens to the State itself. And here, the proposition is a general one; thus, a citizen of the State of Virginia cannot, by emigration, discharge himself of any obligation to the State, the non-performance of which involves by its laws any penal consequence. If he leave the State under any such circumstances, though under pretense of expatriation, he is a fugitive from justice, not a lawful emigrant; the State will demand his extradition from the State to which he assumes to emigrate, and obtain it, in virtue of an express provision of the Constitution of the United States; and the State will itself deliver up, on demand, any such person undertaking to emigrate to it from any other State. (Code, tit. x, ch. 17, § 8-16.)

The State of Kentucky imitated the State of Virginia in this respect, repeating in

substance, and almost in the same words, the enactment of the latter as well as to citizenship as expatriation.

No other State of the Union has, so far as my observation extends, attempted to solve these interesting questions by express legislation.

The constitution of the State of Pennsylvania declares that "emigration from the State shall not be prohibited," (art. ix, § 25.) The same provision is contained in the constitution of the State of Indiana, and, it may be, of some other States. But this declaration is to be taken subject to all the qualifications which have been exhibited in discussing the institutions of the States of Virginia and Kentucky.

The nature of these qualifications may be illustrated further, by supposing the militia of the State of Pennsylvania or of Indiana to be in the field. If a discontented soldier in the ranks undertakes to escape his duties by professed emigration, will that profession be admitted by the State? Undoubtedly not. It will reply that desertion cannot be covered up under the cloak of emigration; in a word, that emigration or expatriation cannot shelter a criminal act, and is of necessity subject to conditions of the service of the State.

If we pass now to the legislation of the United States we shall encounter a series of provisions which confirm the conclusions already drawn from the legislation of the States, involving the general doctrine that a citizen of the United States cannot, of right, discharge himself by emigration from subsisting obligations, either private ones or to the Union.

In the first place, the Federal Government recognizes the general doctrine that a citizen or subject cannot, by pretense of expatriation, relieve himself from any existing penal liability to the Union, or to any one of its States. It provides by the Constitution and by laws for the extradition of fugitives from service or crime as between the States respectively; and it provides, by numerous treaties and by laws for the extradition of fugitives from justice as between the United States and foreign governments.

Nor, in the second place, can it be doubted that the same doctrine may be applied in the United States to some cases in which the act of expatriation is itself, in motive as in fact, an evasion of duties to the state. Thus, we should not be prepared to admit that a soldier in the Army, or a seaman in the Navy, can, by pretense of expatriation, relieve himself from the charge of desertion; or an officer of the Army or Navy on the same pretense anticipate and escape a charge of treason involved in the very act of expatriation.

To the contrary of this, we have the case reported of one Elijah Clark, who was tried and sentenced as a spy during the last war between the United States and Great Britain, although he had professedly emigrated to Canada. (Breckenridge's *Miscellanies*, p. 409.)

For there is unanimity of opinion among jurists and statesmen alike, that expatriation, even if admitted of general right, must not involve any collateral violation of law or of duty to the State or to fellow-citizens. "The laws do not admit," says Mr. Jefferson, "that the bare commission of crime amounts, of itself, to a divestment of the character of citizen, and withdraws the criminal from their coercion." (Letter to Mr. Morris, August 16. 1793. *American State Papers, Foreign Relations*, vol. 1, p. 169.)

This remark of Mr. Jefferson's is the more significant, inasmuch as he applied it to the very case of alleged emigration as the cover of acts in violation of the neutrality of the United States.

But here debate opens. The Government of the United States commenced with successful revolution; it was organized on the hypothesis of allowing the largest range to individual volition compatible with public safety; the people of the United States are composed of emigrants from Europe, most of whom expatriated themselves in order to escape from oppression, or, if you please, legal impediments to personal action, in the countries of their birth—and many of whom were the actors and the victims of revolutions or of civil wars. Thus it happens that the sympathies of the people of the United States, and to a certain degree their laws, tend to admit full freedom of expatriation, under all circumstances, where the inducement is political opinion or action.

Accordingly, the United States, while readily entering into treaty stipulations with foreign governments for the reciprocal extradition of persons accused of mere municipal offenses, have never conceded, and, of course, never asked the extradition of persons accused of political offenses, or other acts in derogation of mere allegiance.

Meanwhile, in matters akin to this in principle, though apparently distinct, the legislators and the courts of the United States have exhibited much uncertainty of opinion, consequent on the popular assumption of a theory of unlimited right of emigration, and the undeniable difficulty of reconciling that theory to some of the exigencies of public security and peace.

For the preservation of the neutrality of the United States, we have enacted laws which forbid foreign recruitments in the country, or the equipment of expeditions

therein, by land or sea, for the purpose of hostilities against any government with which the United States are at peace. These enactments proceed on the sound hypothesis that the right of war belongs only to states, not to individuals. These enactments also recognize the fact that no country can permit its inhabitants to make war on the inhabitants of another country, without giving just umbrage to the latter, violating the principles of natural justice and of international law, and thus in the end super-inducing war between the two governments. Nothing can be plainer than the position that the body-politic should determine the question of peace or war through its appointed agents, legislative or executive. And no government, which respects its own dignity, or desires to maintain its independence and sovereignty, will suffer unauthorized individuals to wield at will this the highest of all the political functions of a state.

The remarks of Mr. Jefferson are pertinent and conclusive on this point. In a dispatch of his already quoted, he says:

* * * "If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens. But this is not true, either on the general principles of society or by our Constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true, and no citizen has a right to go to war of his own authority; and for what he does without right he ought to be punished.

"Indeed nothing can be more obviously absurd than to say all the citizens may be at war, and yet the nation at peace." (*Ubi supra*, p. 161.)

Of course, laws of this description are just in themselves and conformable to reason; and, as such, have been constantly maintained by the United States.

In this condition of the law, a case of prize, in which one of the questions was whether the capture was invalidated by reason of the cruiser having been fitted out in the United States, in violation of law, came up for adjudication in the Supreme Court of the United States; and, as incidental to this question, there was elaborate discussion at the bar, of the right of expatriation, induced by the fact that the commander of the cruiser assumed, as preparation for that command, to have renounced his allegiance to the United States. (*Talbot vs. Janson*, iii Dallas's Rep., p. 383.)

It clearly appeared in the case that the cruiser was armed and fitted out in fraud of the law; and for that reason the prize was restored to her owners. Two of the judges, Chief Justice Rutledge and Justice Wilson, rested on this point, with but brief allusion to the question of expatriation; but the other three spoke of this in terms not to be mistaken.

Justice Patterson made the significant remark, "It is an obvious principle, that an act of illegality can never be construed into an act of emigration or expatriation. At that rate treason and emigration, or treason and expatriation would, in certain cases, be synonymous terms."

To which he added the query, "Can that emigration be legal and justifiable which commits or endangers the neutrality, peace, or safety of the nation of which the emigrant is a member?"

Justice Cushing calls attention to the necessity of proving the *bona fides* of an alleged act of expatriation; which is the more essential in the case of persons who engage in illegal military enterprises under the guise of emigration, and who do not, in purpose or fact, renounce their allegiance to their native government, and do not hesitate to claim its protection when they become involved in difficulties by reason of their illegal undertaking.

But Justice Iredell entered fully into the general merits of the subject, as follows:

"That a man ought not to be a slave; that he should not be confined, against his will, to a particular spot, because he happened to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidentally attached, when he can better his situation elsewhere, much less when he must starve in one country, and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world appear clearly to recognize.

"The only difference of opinion is as to the proper manner of executing this right.

"Some hold that it is a natural, unalienable right in each individual; that it is a right upon which no act of legislation can lawfully be exercised, inasmuch as a legislature might impose dangerous restraints upon it; and, of course, it must be left to every man's will and pleasure to go off, when, and in what manner, he pleases.

"This opinion is deserving of more deference, because it appears to have the sanction of the constitution of the State, (Pennsylvania,) if not of some other States in the Union.

"I must, however, presume to differ from it, for the following reasons:

"1. It is not the exercise of a natural right in which the individual is to be considered as alone concerned. As every man is entitled to claim rights in society, which it is the duty of the society to protect, he in his turn is under a solemn obligation to discharge all those duties faithfully which he owes as a citizen to the society of which he is a member, and, as a man, to the several members of the society, individually.

with whom he is associated. Therefore, if he has been in the exercise of any public trust, for which he has not fully accounted, he ought not to leave the society until he has accounted for it. If he owes money he ought not to quit the country and carry all his property with him, without leave of his creditors. Many other cases might be put, showing the importance of the public having some hold of him until he has fairly performed all those duties which remain unperformed, before he can honestly abandon the society forever. But, it is said, his ceasing to be a citizen does not deprive the public, or any individual of it, of remedies in these respects. Yet, the right of emigration is said to carry with it the right of removing his family and effects. What hold have they of him afterward?

"2. Some writers on the subject of expatriation say a man shall not expatriate in a time of war, so as to do a prejudice to his country. But, if it be a natural unalienable right, upon the footing of mere private will, who can say this shall not be exercised in time of war as well as in time of peace, since the individual upon that principle is to think of himself only? I therefore think, with one of the gentlemen for the defendant, that the principle goes to a state of war as well as peace, and it must involve a time of the greatest public calamity as well as the profoundest tranquillity.

"3. The very statement of an exception in time of war shows that the writers on the law of nations, upon the subject in general, plainly mean, not that it is a right to be always exercised without the least restraint of his own will and pleasure, but that it is a reasonable and moral right, which every man ought to be allowed to exercise, with no other limitation than such as the public safety or interest requires, to which all private rights ought and must forever give way.

"And if in any government principles of patriotism and public good ought to predominate over mere private inclination, surely they ought to do so in a republic founded on the very basis of equal rights, to be perfectly enjoyed in every instance where the public good does not require a restraint.

"4. In some instances, even in time of war, expatriation may fairly be permitted. It ought not, then, to be restrained. But who is to permit it? The legislature, surely, the constant guardian of the public interest where a new law is to be made or an old one dispensed with. If they may take cognizance in one instance, (as, for example, in time of war,) because the public safety may require it, why not in any other instance, where the public safety for some unknown cause may equally require it? Upon the eve of a war it may be still more important to exercise it, as we often see in case of embargoes.

"5. The supposition that the power may be abused is of no importance if the public good require its exercise. This feverish jealousy is a passion that can never be satisfied. No man denies the propriety of the legislature having a taxative power. Suppose it should be seriously objected to, because the legislature might tax to the amount of 19s. to the pound. They have the power, but does any man fear the exercise of it? A legislature must possess every power necessary to the making of laws. When constructed as ours is, there is no danger of any material abuse. But a legislature must be weak, to the extremest verge of folly, to wish to retain any man as a citizen whose heart and affections are fixed on a foreign country in preference to his own. They would naturally wish to get rid of him as soon as they could, and therefore, perhaps, the proper precaution would be to restrain acts of banishment, (if such could be at all permitted,) rather than to limit the legislative control over expatriation. But is there no danger of abuse on the other side? Have not all the contentions about expatriation in the courts arisen from a want of the exercise of this very authority? For if the legislature had prescribed a mode, every one would know whether it had or had not been pursued, and all rights, private as well as public, would be equally guarded; but upon the present doctrine no rights are secured but those of the expatriator himself. I, therefore, have no doubt that, when the question is in regard to a citizen of any country whose constitution has not prohibited the exercise of the legislative power in this instance, it not only is a proper instance in which it may be exercised, but it is the duty of the legislature to make such provision, and for my part I have always thought the Virginia assembly showed a very judicious foresight in this particular."

It is impossible to misapprehend the general effect of the opinion expressed by Mr. Justice Iredell. It disaffirms unlimited right of expatriation. It reserves all the rights of the State in the premises. (Sergeant's Constitutional Law, p. 319.)

Indeed, when this case first made its appearance in the admiralty court of the State of South Carolina, under all the influences of local sympathies to bias him, the judge, (Bee,) in maintaining the right of expatriation and emigration, expressly adds the conditions "Where no legal prohibition exists, and no prejudice is done thereby." (Jansen v. The Christina Magdalena, Bee's Rep., pp. 11, 23.)

This was in the year 1794. In the year 1799 the same question recurred, but under different circumstances. Indictment was found in the proper court of the United States against a person, a natural citizen of the United States, charged with acts of hostility against a foreign government, who pleaded that he had expatriated himself, and become the subject of the belligerent state, in whose service he committed the acts of hostility. But the plea was overruled by the court, (Chief Justice Ellsworth,)

and the party was convicted and sentenced. (The United States *v.* Williams, 2 Cranch's Rep., p. 82, note.)

In this case the Chief Justice said, and said truly, that the political society, that is, the whole body of the citizens associated in a government, had rights as well as its individual citizens; and that the latter had no rights to be enjoyed to the destruction of the whole society. He also said with truth that "The most visionary writers on this subject do not contend for the principle in the unlimited extent that a citizen may at any and at all times renounce his own and join himself to a foreign country." These views, it is clear, are in accordance with the spirit and letter of the existing laws of the States of Virginia and Kentucky.

The opinion expressed by the Chief Justice on this occasion was much criticised at the time; but with the less reason, considering, as the facts in the case indicate, that the party assumed foreign allegiance only for the special purpose, and then returned to reclaim his ancient rights as a citizen of the United States.

No laws in any country would be capable of execution if men were allowed to oscillate thus between different allegiances, at the dictate of caprice or self-interest.

There was another act of Congress, in the execution of which questions of the same class came once again before the Supreme Court of the United States.

During the partial estrangement which occurred between the United States and the French Republic, at the close of the last century, an act of Congress was passed which for the time being prohibited all commercial intercourse with France on the part of persons resident within the United States, or under their protection; and subjected to forfeiture all vessels employed in the prohibited commerce, and belonging to persons residing in the United States, or to citizens thereof residing elsewhere. It contained other provisions in the same spirit, not material to the present question.

While such was the law a vessel was captured, and came before the courts of the United States for adjudication under circumstances which raised the question whether the owner fell within the scope of persons to whom commerce with France was prohibited.

This person was born in the State of Connecticut before it became independent of Great Britain, and thus might, perhaps, have claimed the rights of citizenship in the United States. But he went to the Danish island of Saint Bartholomew's at an early age, married, and was domiciled there, and became a subject of Denmark.

Upon these facts, the whole question of expatriation passed in review before the Supreme Court. The court, by Chief Justice Marshall, disposed of it in these words:

"Jared Shattuck, having been born within the United States, and not being proved to have expatriated himself according to any form prescribed by law, is said to remain a citizen, entitled to the benefit and subject to the disabilities imposed upon American citizens; and, therefore, to come expressly within the description of the act which comprehends American citizens residing elsewhere.

"Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character, otherwise than in such manner as may be prescribed by the law, is a question which it is not necessary at present to decide. The cases cited at bar, and the arguments drawn from the general conduct of the United States on this interesting question, seem completely to establish the principle that an American citizen may acquire, in a foreign country, the commercial privileges attached to his domicile, and be exempted from the operation of an act expressed in such general terms as that now under consideration. Indeed, the very expressions of the act would seem to exclude a person under the circumstances of Jared Shattuck. He is not a person under the protection of the United States. The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection; and the interposition of the American Government in his favor would be considered a justifiable interposition. But his situation is completely changed where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States, a point not intended to be decided, yet it certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance, and consequently takes him out of the description of the act.

"It is, therefore, the opinion of the court, that the Charming Betsy, with her cargo, being at the time of her recapture the *bona-fide* property of a Danish burgher, is not forfeitable in consequence of her being employed in carrying on trade and commerce with a French island." (Murray *vs.* Schooner Charming Betsy, 2 Cranch, pp. 64, 119.)

It is observable that the court carefully abstain from asserting any unlimited right of expatriation. Nor was any such right pretended among the eminent counsel, Messrs. Key, Alexander J. Dallas, and Martin, who argued the case. On the contrary, it was conceded on all hands, in the words of Mr. Dallas, "that a man cannot expatriate himself unless it be done in a fit time, with fairness of intention, and publicity of act."

At the commencement of the last war between the United States and Great Britain, this question again presented itself in two cases of great interest, where, however, the main question being of the effect of commercial domicile on the national character, the doctrine of expatriation was touched only, without being elucidated. (*The Venus*, 8 Cranch, p. 253; the *Francis*, *ibid.*, p. 335.) In each of these cases, the party concerned was a native of Great Britain, who, after coming to the United States and being naturalized here, returned to Great Britain, and there resided at the time of the declaration of war. Laying aside all consideration, either of naturalization or of expatriation, the Supreme Court, in discussing the effect of their commercial domicile in the enemy's country, conceded to them, for the argument's sake, all the rights of native Americans.

Soon after this, in the question of the ownership of a vessel as bearing upon the question of domestic or foreign bottom, Mr. Justice Washington said:

"I do not mean to moot the question of expatriation, founded on the self-will of a citizen, because it is entirely beside the business before the court. It may suffice for the present to say that I must be more enlightened on this subject than I have yet been, before I can admit that a citizen of the United States can throw off his allegiance to his country without some law authorizing him to do so." (*United States vs. Gillies*, 1 Peters's C. C. Rep., p. 159, 161.)

Finally, at a later period, the same question came before the Supreme Court, and was argued by eminent counsel, including Mr. Tazewell and Mr. Webster, in exposition of a clause of the existing treaty between the United States and Spain, which prohibits the citizens or subjects of the respective contracting parties from taking commissions to cruise in private armed vessels against the other, under penalty of being considered pirates. On this occasion Justice Story, in delivering the opinion of the court, made the following observations:

"This view of the question renders it necessary to consider another, which has been discussed at the bar, respecting what is denominated the right of expatriation. It is admitted by Captain Chayton, in the most explicit manner, that, during this whole period, his wife and family have continued to reside at Baltimore; and, so far as this fact goes, it contradicts the supposition of any real change of his own domicile. Assuming, for the purposes of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country—as to which we give no opinion—it is perfectly clear that this cannot be done without a *bona-fide* change of domicile, under circumstances of good faith. It can never be asserted as a cover for fraud, or as a justification for the commission of a crime against the country, or for a violation of its laws, when this appears to be the intention of the act. It is unnecessary to go into a further examination of this doctrine; and it will be sufficient to ascertain its precise nature and limits when it shall become the leading point of a judgment of the court." (*The Santissima Trinidad*, 7 Wheaton, pp. 283, 357.)

There is one other important relation of the subject in which it has come before the Supreme Court of the United States, and that is in the discussion of questions of allegiance as bearing on the rights of property of persons who, though natives of the United States, yet left the country on its revolutionary separation from Great Britain. It is the celebrated question of the *ante-nati*, discussed in Calvin's case, (7 Co. R., p. 18 b.,) and previously determined by Bracton. (*De Legibus Angliæ*, fol. 427 b.)

In disposing of such cases, the Supreme Court has occasionally, and at a relatively late time, referred to the question in very expressive language. Thus, in one of them, Justice Thompson assumes that "allegiance may be dissolved by the mutual consent of the Government and its citizens and subjects," (*Inglis vs. Sailors' Snug Harbor*, 3 Peters's R., pp. 99, 125;) and in another Justice Story says, "The general doctrine is, that no persons can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens." (*Shanks v. Dupont*, *ibid.*, pp. 242, 247.)

Here, in so far as regards the views of the Supreme Court or its members, the matter stands; unadjudicated as decision, but not undetermined as opinion. After carefully reviewing the whole subject, Chancellor Kent pronounces the better opinion to be, that a citizen cannot renounce his allegiance to the United States without permission of the Government, to be declared by law. (*Commentaries*, vol. 2, p. 49.) It is a significant fact, at all events, that, on so many occasions when the question presented itself, not one of the judges of the Supreme Court has affirmed, while others have emphatically denied, the unlimited right of expatriation from the United States.

This exposition of the opinions on the question of the right of expatriation by the judicial authorities of the United States would be incomplete without some brief statement of what has occurred on the subject in the courts of the States.

Observations on the subject occur in sundry cases of the class already spoken of, where the main question was of land belonging to persons who were born in the United States before their separation from Great Britain, but adhered to the mother-country. As the law of England maintains the unalterable perpetuity of allegiance, and as that of England, transmitted to many of the States of the Union, denies the capacity of aliens to hold lands, the question of citizenship repeatedly came before the courts in the early years of the republic.

In such a case in the State of Massachusetts, its supreme court, by Chief Justice Parsons, say :

"Protection and allegiance are reciprocal. The sovereign cannot refuse his protection to any subject, nor discharge him from his allegiance against his consent ; and he will remain a subject, unless disfranchised as a punishment for some crime. So, on the other hand, he can never discharge himself from his allegiance to his sovereign, unless the protection which is due to him from the laws is unjustly denied him." (*Ainslie v. Martin*, 6 Mass. R., p. 460.)

Here a most important feature of the rightfulness of the claim of society, as against the citizen, is indicated, namely, that the laws of the country afford him due protection.

In a case of the same character in the State of Pennsylvania, her supreme court, by Chief Justice Tilghman, speaks of a "principle not compatible with the constitution of Pennsylvania or her sister States ; that is to say, that no man can, even for the most pressing reasons, divest himself of the allegiance under which he was born." (*Jackson v. Burns*, 3 Binney's R., pp. 75, 85.)

Allusions to the point as being yet unsettled occur in the State of Alabama, in a case where distinction between emigration and expatriation is well suggested. (*Beavers v. Smith*, Ala. R., N. S., vol. 11, pp. 20, 29.)

The doctrine is touched, also, in several cases involving matrimonial rights, as affected by domicile or citizenship ; but without any result of importance. (See *Bishop on Marriage*, b. 7.)

But, of the cases in the several States, those adjudged by the courts of Virginia and Kentucky are the most important, because of the special laws of those two States on the subject of citizenship ; and these cases also possess intrinsic interest.

Controversy arose in the State of Virginia, in a matter not material to be here explained, which presented the immediate question of expatriation from the State, but involved in argument that of expatriation generally. (*Murray v. McCarty*, 2 Mumford's R., p. 393.)

In this case Judge Cabell, with concurrence of his associates of the court, affirms the general right of expatriation in these words :

"Nature has given to all men the right of relinquishing the society in which birth or accident may have thrown them, and of seeking subsistence and happiness elsewhere ; and it is believed that this right of emigration, or expatriation, is one of those inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity. But, although municipal laws cannot take away or destroy this great right, they may regulate the manner and prescribe the evidence of its exercise ; and in the absence of these regulations, *juris positivi*, the right must be exercised according to the principles of general law." (*Ibid.*, pp. 396, 397.)

The same judge suggests reasonable doubt of the effect of that provision of the law of Virginia which requires a formal declaration of the purpose of change of citizenship. "If," he says, "arguments drawn from the long and uniform practice of a country are ever allowed to have any influence on a question concerning the construction of its laws, they might here be urged with much force. For, of the innumerable emigrants from Virginia who have overspread the Southern and Western States and Territories, and filled their highest offices, it is believed that not one has ever deemed it necessary to conform to our act concerning expatriation. Are they still citizens of the State ?" (*Ibid.*, p. 399.)

And he adds expression of opinion that, "if a citizen of Virginia shall have departed out of this commonwealth with an open and avowed, fair and *bona fide*, intention of quitting it, and of becoming a citizen of some other State, and shall, in fact, have become a citizen thereof, that, from thenceforth, he ceased to be a citizen of Virginia, notwithstanding he may have omitted to comply with the requisites of our expatriation act." (*Ibid.*, p. 400.)

Judge Roane, another member of the court, dwells on the important fact of the difference between citizenship of a State and that of the United States ; the consideration of which leads him to say, among other things :

"I entirely subscribe to the doctrine that the situation of America, in this particular, is new and may produce new and delicate questions ; that we have sovereignties moving within sovereignties ; that allegiance to a particular State is one thing, and that to the United States is another ; that a renunciation of the former allegiance does not draw after it a renunciation of the latter ; and that a statute of the United States on the subject of expatriation is much wanted." (*Ibid.*, 403.)

And the same distinction draws after it the following reflection :

"The power of expatriation, in relation to the commonwealth of Virginia, is one with which Congress had certainly nothing to do ; it is not granted in the instrument of government ; and it is a fundamental principle in our system that each State retains every power, jurisdiction, and right, which is not delegated to the United States by the Constitution, nor prohibited by it to the States. The power of legisla-

tion on the subject of expatriation from the commonwealth of Virginia has not and ought not to have been given up by Virginia to the United States." (*Ibid.*, p. 405.)

As to which it may be observed that, undoubtedly, the State of Virginia may determine who is a citizen of that State, in relation to any matter of the proper jurisdiction of the State, but not in matters of the jurisdiction of the United States. The question of citizenship, for instance, as affecting the right to hold lands in the State, the State itself may decide, without interference on the part of the United States. Not so in regard to Federal citizenship.

Indeed, in one great class of cases, that of suits in the courts of the United States by the citizens of one State against the citizens of another, as provided for by the Constitution, it has been adjudged that mere simple removal to one State from another, and residence in the former, constitutes a change of citizenship in that respect within the meaning of the Constitution and the acts of Congress. (*Cooper v. Gilbraith*, 3 Washington's C. C. R., p. 546; *Case v. Clark*, 5 Mason's R., p. 70.) The party must of course be otherwise a citizen of the United States. (*Gassies v. Ballou*, 6 Peters, 761.)

Finally, the members of the court affirm, with one accord, that, conceding the right of expatriation, however regulated, its effective exercise depends on the completeness, publicity, and good faith of the assumed act of expatriation.

Views to the same effect, in substance, appear to have been entertained by the courts of the State of Kentucky. In one case, to be sure, the court merely refer to this matter as a "litigated question," and refuse to pass upon it without necessity. (*Brooks v. Clay*, 3 A. K. Marshall's R., p. 545. See S. C., *Shearer v. Clay*, 1 Littell's R., p. 261.) But, in a later case, the court of appeals of that State, by Chief Justice Robertson, met the great question directly, and placed it on what are, in my judgment, its true foundations.

In the first place, the court construe the law of Virginia reasonably, suggesting that the mode of expatriation prescribed by that law is very proper, but "is not, of course, the only admissible or satisfactory evidence of the fact that the admitted right has been exercised."

In the second place, the court say:

"Whatever may be the speculative or practical doctrine of feudal governments or ages, *allegiance*, in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as adopted citizens, with the presumed concurrence of the Government, without its formal or express sanction. Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation, all recognize it. It has grown with our growth, and strengthened with our strength. The political obligations of the citizen, and the interests of the republic, may forbid a renunciation of allegiance by his mere volition or declaration, at any time, and under all circumstances. And, therefore, the Government, for the purpose of preventing abuse and securing the public welfare, may regulate the mode of expatriation. But when it has not prescribed any limitation on the right, and the citizen has in good faith abjured his country, and become a subject or citizen of a foreign nation, he should, as to his native government, be considered as denationalized, especially so far as his civil rights may be involved, and at least, so long as that government shall seem to acquiesce in his renunciation of his political rights and obligations." (*Alsberry v. Hawkins*, 9 Dana's R., p. 177.)

These are intelligent views: expatriation a general right, subject to regulation of time and circumstance according to public interests; and the requisite consent of the State presumed where not negated by standing prohibitions.

In conclusion of this part of the subject, it seems proper to add, that the juridical authorities of the United States admit that a party may by his own act be subject to the conflicting obligations of two different allegiances. (*United States v. Williams*, 2 Cranch, p. 82, note; *Ainslie v. Martin*, 9 Massachusetts R., p. 453; *Sergeant's Constitutional Law*, p. 319.)

A meritorious writer on constitutional law (Mr. Rawle) has devoted some pages to the discussion of the question. He maintains, with reason, that no such thing as absolute or indefeasible right of expatriation exists, any more than absolute or indefeasible right of allegiance; and suggests consideration of the distinction between mere emigration, involving question of domicile only, and expatriation, involving of necessity change of allegiance. (*Rawle on the Constitution*, ch. 9. See also *Duer's Lectures*, p. 302.)

Another legal commentator has been disposed to affirm, with more absoluteness, the right of expatriation, and with perhaps insufficient regard for the contingent rights of the State. (*Tucker's Blackstone*, vol. ii, pt. 2, p. 90.)

There is a small but well-written treatise on the question by Mr. Hay, elicited by the circumstances in which the second war between the United States and Great Britain originated, and which involved, among other things, extravagant assertions of the doctrine of indefeasible allegiance, as against British emigrants to the United States.

In truth, opinion in the United States has been at all times a little colored on the

subject by necessary opposition to the assumption of Great Britain to uphold the doctrine of indefeasible allegiance, and in terms to prohibit expatriation. Hence we have been prone to regard it hastily as a question between kings and their subjects. It is not so. The true question is of the relation between the political society and its members, upon whatever hypothesis of right, and in whatever form of organization, that society may be constituted.

The assumption of a natural right of emigration, without possible restriction in law, can be defended only by maintaining that each individual has all possible rights against society, and the society none with respect to the individual; that there is no social organization, but a mere anarchy of elements, each wholly independent of the other, and no otherwise consociated save than by their casual co-existence in the same territory. (Ahrens, *Droit Natural*, p. 324.)

Accordingly through all the diversities of opinion respecting the question, the true doctrine of our law is readily distinguishable, as it appears to me, and is not in contradiction with jurisprudence, theoretical or positive, of the enlightened nations of Europe.

If we cursorily inspect the existing laws of different countries, we discern in them three aspects of the main question.

In Great Britain the professed theory and the actual law combine to prohibit expatriation in terms. (Act of 3 James I, cap. 4.) In practice, however, emigration is permitted, nay encouraged. And, on the other hand, the most striking negation of the indefeasibility of allegiance as a principle is afforded by the act of Parliament of 7 and 8 Victoria, cap. 66, which makes permanent a general provision for the naturalization of aliens in Great Britain. (See Bowyer's *Const. Law of England*, p. 406.) Thus it is that the jurisprudence of England, little capable of generalization, asserts an assumed rule of public law, or denies it, according to the caprices of apparent local interest; and her diplomacy, with characteristic inconsequence and partiality of thought, upholds abroad, while it repudiates at home, the saying of the great republican juriconsult, *civitas carcer non est*. (Bynkershoek, *Quæst. J. Pub.*, lib. i., cap. 22.)

The singularity of the law of England consists in the doctrine, that, as explained by Sir William Blackstone, a natural subject cannot by any possibility or for any reason cease to be a subject, save by the permission of his liege lord. (Blackstone's *Com.*, vol. i, p. 369.) And this, adds Blackstone, is a "principle of universal law;" in support of which strange assertion he cites, not any of the great authorities of universal or public law—all of whom, as we shall presently see, maintain the contrary—but a common lawyer of his own country, namely, Sir Matthew Hale. (Pleas of the Crown, vol. i, p. 68.) And a very modern commentator on the laws of England (Mr. Anstey) adheres to the doctrine, applying to every Englishman who leaves the country the phrase of *amittit regnum sed non regem*. (Lectures on the Laws of England, p. 94.)

In other countries, the party emigrating contrary to law may lose the civil rights of his birthplace, and become liable to forfeitures of a local description, but without drawing upon himself the extreme consequences involved in the doctrine of the laws of England.

Thus, the Code Napoléon provides that "The quality of Frenchmen will be lost: 1, by naturalization acquired in a foreign country; 2, by the acceptance, without authority of the government, of public functions conferred by a foreign government; 3, by establishment in a foreign country without purpose of return." (Art. 17.) It also provides the means of recovering the lost quality, except in the case of the party bearing arms against his country. (Arts. 18, 20, 21.) There are several decrees, one of the reign of Louis XIV, and two of that of Napoleon I, which add confiscations and loss of civil rights, as the penalty of any Frenchman expatriating himself without public authority. But some doubt exists whether these decrees are now in force, and at any rate they are not so as respects the provision of confiscation; the doctrine of the general right of expatriation being maintained in France. (Daloz, *Dic. Jur. voc. Droit Civil*, 53.)

Spain and the Spanish American Republics contemplate and provide for voluntary expatriation. (Escriche, *Dic. sub. voce. Espanol, Natural*.)

It is a curious fact that, at the time when Bynkershoek wrote, the governments which prohibited expatriation under penalties were Great Britain, Russia, France, and China. (*Quæst. Juris. Publ.*, lib. i., cap. 22.)

Then, as now, expatriation was lawful in Spain, as it now is in the Spanish American Republics. (Escriche, *ubi. supra*.) And the public policy of Spain has never been otherwise in this relation. (Don, *Derecho Publico*, lib. i, tit. 7.)

But the most explicit and complete enactments on the subject are those of some of the States of the Germanic Confederation. I take as example the legislation of Austria and Prussia.

In each of these countries emigration is permitted by law, but regulated. In neither of them can expatriation take place legally in evasion of military duty. In both special conditions apply to the time of war. In Prussia permission to emigrate is not refused unless for prescribed causes, appertaining to military or civil obligations; in

Austria it may be refused at discretion. In Prussia ten years' residence in a foreign country, with some exceptions, effects the result of expatriation; this provision is omitted in Austria. Of each system, the common and essential feature is a standing provision for emigration on application to the public authorities. (Decree of the Emperor Francis I, of March 24, 1832; Circular of King Frederick William, of December 31, 1842.)

In the United States, as we have seen, there is no provision of federal law which defines citizenship; and none which expressly forbids or expressly authorizes the expatriation of citizens of the United States.

On several occasions, when the question was before Congress, doubts were suggested whether the Federal Government has power to legislate on the subject. I cannot perceive the force of these doubts. Citizenship is a federal qualification for the tenure of office, and for the enjoyment of many other rights under the Constitution of the Union. What constitutes citizenship of the United States cannot be determined by the several States. If they were to undertake it, they would be found to differ radically and irreconcilably in the matter. If Congress cannot do it, then the Union is in the singular predicament of the constitutional impossibility of ascertaining who compose it, who may be its President, Senators, and Representatives. No such impossibility exists. When Congress enacts that only citizens of the United States are competent to do certain things, it may well proceed to say, if it choose, who the persons thus designated are, and to define them by classes or description of inclusion or exclusion. If it could not say this directly, and by systematic definition, in the way other nations do, it could say it indirectly by acts of penalty; it could say what are the circumstances of time or manner in which the act of emigration would or would not deprive an American of rights, or subject him to penalties and forfeitures. But the idea that citizenship, or the loss of it, cannot be defined by Congress, is one of the lingering prejudices of the common law, which relies upon judicial exposition to deduce general rules from particular cases, instead of laying down general rules by previous legislative survey of the subject-matter. Thus it is that Congress leaves this question to the fortuitous occurrence of some judicial contingency, in which it may be definitely disposed of by decision of the Supreme Court.

In the absence of such a decision, we are compelled to reason out a conclusion in the premises, with aid of analogies of our own or of the public law applicable thereto.

The doctrine of absolute and perpetual allegiance—the root of the denial of any right of emigration—is inadmissible in the United States. It was a matter involved in, and settled for us by, the Revolution, which founded the American Union.

Moreover, the right of expatriation, under fit circumstances of time and of manner, being expressly asserted in the legislation of several of the States, and confirmed by decisions of their courts, must be considered as thus made a part of the fundamental public law of the United States.

Most of the juriconsults and judges who have had occasion to discuss the subject admit, as we see, either directly or indirectly, that it is a question of circumstances and conditions.

The admissibility of change of allegiance in the United States without necessary *express* co-operation of the foreign government, is implied by the naturalization acts, which require conditions of residence, of personal character, of publicity, and of actual abjuration of the foreign allegiance, as indispensable to the consummation of an act of expatriation.

I think, in consideration of these premises, that the omission of the federal laws to enact any express or specific restraints on expatriation is tacit or implied consent, subject only to such conditions of good faith, of discharge of subsisting obligations to the society left, and of consummated expatriation in fact, as the principles of international right require to be observed.

As a question of natural right, emigration belongs to the general category of those elements of individual happiness which every citizen is entitled to pursue, but in subordination, always, to the general welfare. (Grotius, *De Jure Belli ac Pacis*, lib. ii, ch. 5, No. 24; Wolff, *Jus Naturæ*, part vii, cap. i. s. 186, 187; Burlamaqui, *Droit de la Nature*, p. 2, ch. 5, s. 13; Almeda, *Derecho Publico*, tom. i, cap. 17.)

The society cannot absolutely take away this right, but may regulate it in such way as to reconcile the interest of the individual and of the community. (Wolff, *Jus Naturæ*, pars viii, cap. 3, s. 415; Vattel, *Droit des Gens*, liv. i, ch. 19, s. 10.)

In fine, the present state of the law of nations and of nature on this point is well stated by D. Antonio Riquelme, as follows:

“It is a recognized principle of the law of nations that all can change their primitive nationality, according to their convenience. This principle, admitted by all the world, and in virtue of which every individual may renounce the nationality which birth combined with parentage gives him, does not release him who avails himself of it of the obligations which he owes to his country; so that the citizen or subject who, without authorization of his government, accepts the nationality of a foreign state, may be called upon for the performance of the personal charges imposed upon

him by his primitive country in the form which the laws establish. Thus, a deserter from the military service, who becomes naturalized in the state to which he flies, though not subject to extradition without special treaty authorizing it, if, nevertheless, he come within the jurisdiction of the authorities of his primitive country, cannot be reclaimed by his new one, but remains bound to fulfill the obligations of his service. While the law of nations concedes to individuals the liberty of changing their nationality, it also empowers a state to restrict this faculty in certain circumstances, as in case of war and others, in return for the services and protection which it bestows on the citizen or subject; and when he changes his nationality in contempt of the laws, he gives occasion for the disregard of his new nationality." (*Derecho Internacional*, tom. i, p. 319.)

In the absence of general prohibition, general consent of the state is presumed. "*Vel si consensu expresse aut tacito.*" (Puffendorf, *De Officio Hominis et Civis*, lib. ii, cap. 18.) Or, in the words of Bynkershoek, "*Si non sit lex quæ prohibeat, utique licet subditi conditionem exuere, et civitatem ut lubet mutare.*" (*Quæstiones Juris Publici*, lib. i, cap. 22.)

Of course, the citizen cannot apply such implied consent to any act of pretended emigration, which is itself a violation otherwise of the law, either public or municipal, as in the case of illegal military enterprises; nor, by it, can he escape the punishment of crime or the performance of local contracts, nor appeal to it as a mask to cover desertion or treasonable aid of the public enemy. I am not prepared to say that the right of a citizen of the United States to expatriate himself, implied in the absence of any prohibition, may not be exercised in time of war; but, if so, it would have to be done with attendant circumstances, clearly showing good faith, in order to be justifiable; and it is not easy to see how citizenship could be transferred in time of war to the foreign enemy in such way as to escape reprehension, if the party should afterward return to the United States.

And, whether in peace and war, the expatriation would have to be an actual one, by foreign residence, and with authentic renunciation of the pre-existing citizenship. Under the circumstances and with the conditions thus indicated, and subject to such others as the public interest might seem to Congress to require to be imposed, it seems to me that the right of expatriation exists, and may be freely exercised by the citizens of the United States.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. WILLIAM L. MARCY,
Secretary of State.

(B.)

UNITED STATES NATURALIZATION ACT, 1802.

[N. B.—*This law has been already printed.*]

(C.)

"ANN," SMITH.

This ship, under American colors, was seized in the river Thames, by the marshal of the admiralty, on the 1st of August, 1812. A claim was given by the master, who was also sole owner of the ship, describing himself to be a British subject, and as such entitled to the benefit of the order in council of November, 1812, directing the restitution of British ships under the American flag. It appeared that he was a native of Scotland, and that his wife and family resided in that country, but that he had himself been admitted a citizen of America about sixteen years ago, upon taking an oath that he had been sailing out of the American port for two years; that from the year 1799 till 1805 he had been connected with a house of trade at Glasgow, which had an establishment at New York, and another at Charlestown, and that he had occasionally resided at each of the last-mentioned places; that he had purchased this vessel at public auction in America, and had made three voyages in her, the two first from Charlestown to Kingston, in Jamaica, returning each time in ballast, and the last from Charlestown to the river Thames. The question was, whether, from the residence and employment of this man, he was, *quoad* this vessel, to be considered as a British subject.

JUDGMENT.

Sir W. SCOTT. This ship, when seized by the marshal in the river Thames, was under the American flag, but, according to the account given by the master, was not furnished with the American, or indeed with any pass whatever. It is very difficult to conceive that this was the true state of the case, since the ship was not only American-built but likewise American-owned, as far, at least, as the ostensible character of the claimant is concerned; for though he could not altogether throw off his allegiance to his native country, he had been admitted a citizen of the United States. I cannot conceive, therefore, why the pass was not granted, or what obstacle prevented this man from obtaining so important a document. I must presume that the vessel was furnished with an American pass; but, supposing the case to be otherwise, still, if the ship was furnished with the documents usually granted to American ships, the same rule of law must be applied as if she had been furnished with a regular flag and pass. The ship must be conclusively held to be American property, and consequently subject to condemnation.

It is said, however, that this ship is protected by the order in council issued on the 28th of November, 1812, by which it is directed "that all vessels under the flag of the United States of America which are *bona fide* and wholly the property of His Majesty's subjects, and not purchased by them subsequent to the date of hostilities on the part of the United States of America, and which shall have been detained in port under the embargo, or shall have sailed to or from the ports of this kingdom previous to the knowledge of hostilities, and shall have been captured on such voyage, shall be restored to the British owners, upon satisfactory proof being made to the high court of admiralty or the courts of vice-admiralty, to which they shall be taken for adjudication, that the said vessels are *bona fide* and wholly the property of His Majesty's subjects as aforesaid, and had been engaged in trade as above described." A claim has been given for this ship by Mr. Smith, describing himself to be a British subject; and, if he is a British subject, he will, under this order in council, be entitled to restitution.

The question, therefore, comes to this, whether the claimant is, *quoad* this property, to be considered a British subject. For some purposes he is undoubtedly so to be considered. He is born in this country, and is subject to all the obligations imposed upon him by his nativity. He cannot shake off his allegiance to his native country, or divest himself altogether of his British character by a voluntary transfer of himself to another country. For the mere purposes of trade he may, indeed, transfer himself to another state, and may acquire a new national character. An English subject, resident in a neutral state, is at liberty to trade with the enemy of this country in all articles, with the exception of those which are of a contraband nature; but a trade in such articles would be contrary to his allegiance. Now, the account which he gives of himself is, "that he was born at Falkirk, in Scotland; that during the last seven years he has been chiefly at sea, but, when at home, he has lived, and still lives, at Bathgate, in the shire of Linlithgow, in North Britain; that he is the subject of our sovereign lord the King, but about sixteen years ago he was admitted a citizen of the United States of America, for the purpose of commerce only." Why, this transaction is for the purpose of commerce. According to his own account, then, he ceased to be a British subject for commercial purposes. He goes on to say, that he was admitted "for the purpose of covering a ship of his own, to enable her to sail without risk of capture, and he was so admitted by the magistrates of Philadelphia, on oath being made that he had sailed out of an American port for two years; that he hath never been admitted a burgher or freeman of any city or town, but, from the year 1799 to the year 1805, the deponent having been connected in a house of trade at Glasgow, which had a house at New York, and another at Charlestown in South Carolina," so that, from the year 1799 to the year 1805, he might, as far as he was connected with the house at Glasgow, and for that particular branch of his trade, be considered a British subject. But since that time I understand him to say that he has withdrawn altogether from that connection. He says afterward, in answer to the ninth interrogatory, "that he is a North Briton by birth, and when he is at home his place of residence is Bathgate, in the shire of Linlithgow, in North Britain, where his wife and family reside, and where he the deponent hath always resided from the time he was ten or eleven years of age, when he was not at sea or in foreign parts." The affirmative part of his history, as far as it goes, shows that he lived very much abroad, and principally at New York or Charlestown, in America. True it is that he had no house in either of these places, but he was there as a single man. It is not the mere circumstance of leaving a wife and family in Scotland that will avail him for the purpose of retaining the benefit of his national character. He cannot be permitted to take the advantage of both characters at the same time, and in the same adventure. The utmost that can be allowed to him is, that he should be entitled to the one character or the other, according to the circumstances of the transaction. When the vessel herself is American-built, when the personal residence of the owner, as far as he has any, is in America, (for it does not appear that this man at all resided in Scotland,) it would be difficult to say that it could

be any other than an American transaction. Since the purchase of this ship by Mr. Smith, he has made three voyages: two of them to Kingston in Jamaica, and one to the port of London; but to the ports of Scotland he has never sailed, nor does it appear that he has even visited his wife and family in that country. He has been sailing constantly out of American ports, and his prevailing destination has been to the West India Islands. It is quite impossible that he can be protected under the order in council, which applies only to those who are clearly and habitually British subjects, having no intermixture of foreign commercial character. It never could be the intention of His Majesty's government that the benefit of this order should be extended to a person who has thrown off his allegiance, and estranged himself from his British character, as far as his own volition and act could do. I am of opinion that Mr. Smith is not entitled to the benefit of the order in council, and therefore I reject the claim. Ship condemned.

(D.)

Extrait des minutes du greffe du tribunal civil de première instance de l'arrondissement de Wissembourg, département du Bas-Rhin.

Le tribunal civil de première instance de l'arrondissement de Wissembourg a rendu le jugement suivant :

Audience du vingt-cinq avril, mil huit cent soixante :

Entre Michel Zeiter, cultivateur, domicilié aux États-Unis de l'Amérique, demandeur, comparant par Maître Volpert, son avoué ;

Contre M. le préfet du Bas-Rhin, défendeur.

Après avoir ouï à l'audience du vingt courant, les conclusions de M. de Ring, substitut du procureur impérial, et après en avoir délibéré en la chambre du conseil :

Attendu que les tribunaux sont compétents d'après l'article vingt-six de la loi du vingt-un mars, mil huit cent trente-deux, pour décider les questions relatives à l'état ou aux droits civils des jeunes gens appelés à faire partie du contingent de l'armée ; attendu que, d'après l'article deux de la même loi, nul ne peut être admis dans les troupes françaises s'il n'est français :

Que le demandeur prétendant qu'il a perdu sa qualité de Français par sa naturalisation en pays étranger, il n'y a pas à s'inquiéter si cette naturalisation en pays étranger a eu lieu sans l'autorisation du gouvernement français, contrairement aux prescriptions du décret du vingt-six août, mil huit cent onze, mais seulement si, au moment actuel, le demandeur est encore Français.

Attendu que le demandeur rapporte un certificat constatant qu'il s'est présenté devant la cour des plaids communs du comté d'Essex, état de New Jersey, et a fait la demande d'être admis à devenir citoyen des États-Unis d'Amérique, mais qu'il n'est pas justifié que cette formalité suffise pour conférer cette qualité ; que le tribunal doit exiger un supplément de renseignements, tel, par exemple, qu'une attestation du consul des États-Unis en France de reconnaissance du titre de citoyen des États-Unis d'Amérique.

Par ces motifs, le tribunal surseoit à statuer sur la demande jusqu'à ce que le demandeur rapporte une attestation du consul des États-Unis en France, constatant qu'il a rempli toutes les formalités nécessaires pour devenir citoyen des États-Unis, ou toute autre pièce justificative de sa nouvelle nationalité et le condamne dès à présent aux dépens.

Jugé et prononcé à l'audience publique du tribunal civil de l'arrondissement de Wissembourg : présents, Messieurs Bardy, président ; Lanth et Stoffel, juges ; et Richert, procureur impérial.

N. BARDY, ET
VOGT,
Commis Greffier.

Extrait des minutes du greffe du tribunal civil de première instance de l'arrondissement de Wissembourg, Bas-Rhin.

Le tribunal civil de première instance de l'arrondissement de Wissembourg a rendu le jugement suivant :

Audience du deux juin, mil huit cent soixante :

Entre Michel Zeiter, cultivateur, domicilié aux États-Unis d'Amérique, demandeur, comparant par Maître Volpert, avoué ;

Contre M. le préfet du Bas-Rhin, défendeur, représenté par M. le procureur impérial.

Après avoir ouï les conclusions respectives des parties, ainsi que celles du ministère public :

Attendu que, par la production du certificat qui lui a été delivré le vingt-huit mai dernier, par le consul des États-Unis à Paris, et qui a été enregistré à Wissembourg aujourd'hui, le demandeur a justifié qu'il est citoyen américain :

Le tribunal donne acte au demandeur de ce que, par la production du dit certificat, il a satisfait au jugement rendu en ce siège le vingt-cinq avril dernier.

En conséquence dit et reconnaît que le demandeur, Michel Zeiter, par sa naturalisation en pays étranger, a perdu la qualité de Français, et le condamne aux dépens.

Jugé et prononcé à l'audience publique du tribunal civil de l'arrondissement de Wissembourg : presents, Messieurs Bardy, président ; Lanth et Stoffel, juges ; et De Ring, substitut du procureur impérial.

N. BARDY, ET
VOGT,

Commis Greffier.

NOTE.—M. Treitt, who has procured the copy of this paper, states that the judgment attracted little attention at the time it was given, and that it must not be accepted as a definitive exposition of French law on a point which, as he believes, is still open to controversy.

(E.)

Extracts of an opinion of Mr. Attorney-General Bates, dated November 29, 1862.

Who is a citizen ? What constitutes a citizen of the United States ? I have often been pained by the fruitless search in our law books and the records of our courts for a clear and satisfactory definition of the phrase *citizen of the United States*. I find no such definition, no authoritative establishment of the meaning of the phrase, neither by a course of judicial decision in our courts, nor by the continued and consentaneous action of the different branches of our political government. For aught I see to the contrary, the subject is now as little understood in its details and elements, and the question as open to argument and to speculative criticism, as it was at the beginning of the Government. Eighty years of practical enjoyment of citizenship, under the Constitution, have not sufficed to teach us either the exact meaning of the word, or the constituent elements of the thing we prize so highly.

In most instances, within my knowledge, in which the matter of citizenship has been discussed, the argument has not turned upon the existence and the intrinsic qualities of citizenship itself, but upon the claim of some right or privilege as belonging to and inhering in the character of a citizen. In this way we are easily led into errors both in fact and principle. We see individuals, who are known to be citizens, in the actual enjoyment of certain rights and privileges, and in the actual exercise of certain powers, social and political, and we, inconsiderately; and without any regard to legal and logical consequences, attribute to those individuals, and to all of their class, the enjoyment of those rights and privileges, and the exercise of those powers, as incidents to their citizenship, and belonging to them only in their quality of citizens.

In such cases it often happens that the rights enjoyed and the powers exercised have no relation whatever to the quality of citizen, and might be as perfectly enjoyed and exercised by known aliens. For instance, General Bernard, a distinguished soldier and devoted citizen of France, for a long time filled the office of general of engineers in the service of the United States, all the time avowing his French allegiance, and, in fact, closing his relations with the United States by resigning his commission and returning to the service of his own native country. This and all such instances (and they are many) go to prove that in this country the legal capacity to hold office is not confined to citizens, and therefore that the fact of holding any office for which citizenship is not specially prescribed by law as a qualification is no proof that the incumbent is an American citizen.

Again, with regard to the right of suffrage, that is, the right to choose officers of government, there is a very common error, to the effect that the right to vote for public officers is one of the constituent elements of American citizenship, the leading faculty indeed of the citizen, the test at once of this legal right and the sufficient proof of his membership of the body-politic. No error can be greater than this, and few more injurious to the right understanding of our constitutions, and the actual working of our political government. It is not only not true in law or in fact, in principle or in practice, but the reverse is conspicuously true ; for I make bold to affirm that, viewing the nation as a whole, or viewing the States separately, there is no district in the nation in which a majority of the known and recognized citizens are not excluded by law from the right of suffrage. Besides those who are excluded specially on account of some personal defect, such as paupers, idiots, lunatics, and men convicted of infamous crimes, and, in some States, soldiers, all females, and all minor males are also excluded. And

these, in every community, make the majority; and yet, I think, no one will venture to deny that women and children, and lunatics, and even convict felons, may be citizens of the United States.

Our code (unlike the codes of France, and perhaps some other nations) makes no provision for loss or legal deprivation of citizenship. Once a citizen, whether *natus* or *datus*, (as Sir Edward Coke expresses it,) always a citizen, unless changed by the volition and act of the individual. Neither infancy nor madness nor crime can take away from the subject the quality of citizen. And our laws do, in express terms, declare women and children to be citizens. See, for one instance, the act of Congress of February 10, 1855, 10 Stat., 604.

The Constitution of the United States does not declare who are and who are not citizens, nor does it attempt to describe the constituent elements of citizenship. It leaves that quality where it found it, resting upon the fact of home, birth, and upon the laws of the several States. Even in the important matter of electing members of Congress it does no more than provide that "the House of Representatives shall be composed of members chosen every second year *by the people* of the several States, and the *electors* in the several States shall have the qualifications requisite for the electors of the most numerous branch of the State legislature." Here the word *citizen* is not mentioned, and it is a legal fact, known of course to all lawyers and publicists, that the constitutions of several of the States, in specifying the qualifications of electors, do altogether omit and exclude the words *citizen* and *citizenship*. will refer, in proof, to but three instances.

1. The constitution of Massachusetts, adopted in 1779-'80, in article 4 of section 3, cap. 1, provides as follows: "Every *male person*, being twenty-one years of age, and *resident* of a particular town in this Commonwealth for the space of one year next preceding, having a freehold estate within the same town of the annual income of three pounds, or any estate of the value of sixty pounds, shall have the right to vote in the choice of representative or representatives for said town."

2. The constitution of North Carolina, adopted in 1776, after a bill of rights, and after reciting that "whereas allegiance and protection are, in their nature, reciprocal, and the one should of right be refused where the other is withdrawn," declares, in section 8, that all *freemen* at the age of twenty-one years, who have been *inhabitants* of any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons for the county in which he resides."

3. The constitution of Illinois, adopted in 1818, in article 2, section 27, declares that "in all elections all *white male inhabitants* above the age of twenty-one years, having resided in the State six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election."

These three constitutions belong to States widely separated in geographical position, varying greatly from each other in habits, manners, and pursuits, having different climates, soils, productions, and domestic institutions, and yet not one of the three has made *citizenship* a necessary qualification for a voter; all three of them exclude all females, but only one of them (Illinois) has excluded the black man from the right of suffrage. And it is historically true that the practice has conformed to the theory of those constitutions respectively; for, without regard to citizenship, the colored man has not voted in Illinois, and freemen of all colors have voted in North Carolina and Massachusetts.

From all this it is manifest that American citizenship does not necessarily depend upon nor co-exist with the legal capacity to hold office, and the right of suffrage, either or both of them. The Constitution of the United States, as I have said, does not define citizenship; neither does it declare who may vote, nor who may hold office, except in regard to a few of the highest national functionaries. And the several States, as far as I know, in exercising that power act independently, and without any controlling authority over them, and hence it follows that there is no limit to their power in that particular but their own prudence and discretion; and therefore we are not surprised to find these faculties of voting and holding office are not uniform in the different States, but are made to depend upon a variety of facts, purely discretionary, such as age, sex, race, color, property, residence in a particular place, and length of residence there.

On this point, then, I conclude that no person in the United States did ever exercise the right of suffrage in virtue of the naked, unassisted fact of citizenship. In every instance the right depends upon some additional fact and cumulative qualification, which may as perfectly exist without as with citizenship.

I am aware that some of our most learned lawyers and able writers have allowed themselves to speak upon this subject in loose and indeterminate language. They speak "of all the rights, privileges, and immunities guaranteed by the Constitution to the citizen," without telling us what they are. They speak of a man's citizenship as defective and imperfect, because he is supposed not to have "all the civil rights," (all the *jura civitatis*, as expressed by one of my predecessors,) without telling what particu-

lar rights they are, nor what relation they have, if any, with citizenship. And they suggest, without affirming, that there may be different grades of citizenship, of higher and lower degree in point of legal virtue and efficacy; one grade "in the sense of the Constitution," and another inferior grade made by a State, and not recognized by the Constitution.

In my opinion the Constitution uses the word "citizen" only to express the political quality of the individual in his relations to the nation; to declare that he is a member of the body-politic, and bound to it by the reciprocal obligation of allegiance on the one side and protection on the other. And I have no knowledge of any other kind of political citizenship, higher or lower, statal or national; or of any other sense in which the word has been used in the Constitution, or can be used properly in the laws of the United States. The phrase "a citizen of the United States," without addition or qualification, means neither more nor less than a member of the nation. And all such are, politically and legally, equal. The child in the cradle and its father in the Senate are equally citizens of the United States. And it needs no argument to prove that every citizen of a State is, necessarily, a citizen of the United States; and to me it is equally clear that every citizen of the United States is a citizen of the particular State in which he is domiciled.

And as to voting and holding office, as that privilege is not essential to citizenship, so the deprivation of it by law is not a deprivation of citizenship. No more so in the case of a negro than in case of a white woman or child.

In common speech the word "citizen," with more or less of truth and pertinency, has a variety of meanings. Sometimes it is used in contrast with *soldier*; sometimes with *farmer* or *countryman*; sometimes with *alien* or *foreigner*. Speaking of a particular man, we ask, Is he a citizen or a soldier? meaning, Is he engaged in civil or military pursuits? Is he a citizen or a countryman? meaning, Does he live in the city or in the country? Is he a citizen or an alien? meaning, Is he a member of our body-politic or some other nation? The first two predicates relate only to the pursuits and to the place of abode of the person. The last is always and wholly political, and concerns only the political and governmental relations of the individual. And it is only in this last sense, the political, that the word is ever used in the Constitution and statutes of the United States.

We have *natural-born* citizens, (Constitution, article 2, § 5,) not made by law or otherwise, but *born*. And this class is the large majority—in fact, the mass of our citizens—for all others are exceptions specially provided for by law. As they become citizens in the natural way, *by birth*, so they remain citizens during their natural lives, unless, by their own voluntary act, they expatriate themselves and become citizens or subjects of another nation. For we have no law (as the French have) to *decitizenise* a citizen who has become such either by the natural process of birth or by the legal process of adoption. And in this connection the Constitution says not one word, and furnishes not one hint, in relation to the color or to the ancestral race of the "natural-born citizen." Whatever may have been said in the opinions of judges and lawyers, and in State statutes, about negroes, mulattoes, and persons of color, the Constitution is wholly silent upon that subject. The Constitution itself does not *make* the citizens; (it is, in fact, made by them.) It only intends and recognizes such of them as are natural—home-born—and provides for the *naturalization* of such of them as were alien—foreign-born—making the latter, as far as nature will allow, like the former.

And I am not aware of any provision in our laws to warrant us in presuming the existence in this country of a class of persons intermediate between citizens and aliens. In England there is such a class, clearly defined by law, and called *denizens*. "A denizen," says Sir William Blackstone, "is an *alien born*, but who has obtained, *ex donatione regis*, letters-patent to make him an English subject; a high and incommunicable branch of the *royal prerogative*. A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of both of them."—(Sharwood's Com., 374.) In this country I know of but one legal authority tending to show the existence of such a class among us. One of my learned predecessors, Mr. Legaré, (4 Opin., 147,) supposes that there may be such a class, and that free colored persons may be ranked in it. Yet, in that same opinion, he declares that a "free man of color, a *native* of this country, may be admitted to the privileges of a pre-emptioner under the 10th section of the act of the 4th September, 1841." And that act declares that a pre-emptioner must be either a citizen of the United States or a person who had declared his intention to become a citizen, as required by the naturalization laws. Of course the "colored man" must have been a *citizen*, or he could not have entered the land under that act of Congress. If not a citizen *then* by virtue of his native birth, he never could become one by force of law, for our laws extend the privileges of naturalization to such persons only as are "*aliens*, being free *white* persons," and he was neither; not alien, because natural-born in the country; and not a free *white* person, because, though free, confessedly "a man of color."

As far as I know, Mr. Secretary, you and I have no better title to the citizenship which we enjoy than the "accident of birth"—the fact that we happened to be born in

the United States. And our Constitution, in speaking of *natural-born citizens*, uses no affirmative language to make them such, but only recognizes and reaffirms the universal principle, common to all nations and as old as political society, that the people born in a country do constitute the nation, and, as individuals, are *natural* members of the body-politic.

If this be a true principle—and I do not doubt it—it follows that every person born in the country is, at the moment of birth, *prima facie* a citizen; and he who would deny it must take upon himself the burden of proving some great disfranchisement strong enough to override the “*natural-born*” right as recognized by the Constitution in terms the most simple and comprehensive, and without any reference to race or color, or any other accidental circumstance.

That nativity furnishes the rule, both of duty and of right, as between the individual and the government, is a historical and political truth so old and so universally accepted that it is needless to prove it by authority. Nevertheless, for the satisfaction of those who may have doubts upon the subject, I note a few books, which, I think, cannot fail to remove all such doubts: Kent's Com., vol. 2, part 4, sec. 25; Bl. Com., book 1, ch. 10, p. 365; 7 Co. Rep., Calvin's case; 4 Term Rep., p. 300, Doe v. Jones; 3 Pet. Rep., p. 246, Shanks v. Dupont; and see a very learned treatise, attributed to Mr. Binney, in 2 Am. Law Reporter, 193.

In every civilized country the individual is born to duties and rights—the duty of allegiance and the right to protection; and these are correlative obligations, the one the price of the other, and they constitute the all-sufficient bond of union between the individual and his country, and the country he is born in is, *prima facie*, his country. In most countries the old law was broadly laid down that this natural connection between the individual and his native country was perpetual—at least that the tie was indissoluble by the act of the subject alone. (See Bl. Com. *supra*; 3 Pet. Rep.)

But that law of the perpetuity of allegiance is now changed, both in Europe and America—in some countries by silent acquiescence; in others by affirmative legislation. In England, while asserting the perpetuity of natural allegiance, the King, for centuries past, has exercised the power to grant letters of denization to foreigners, making them English subjects, and the Parliament has exercised at pleasure the power of naturalization.

In France the whole subject is regulated by written law, which plainly declares who are citizens, (*citoyens français*), and who are only the French, (*Français*), meaning the whole body of the French people. (See *Les Codes Français, titre premier*.) And the same law distinctly sets forth by what means citizenship and the quality of *French* may be lost and regained; and maintains fully the right of expatriation in the subject, and the power of naturalization in the nation to which he goes.

In the United States it is too late now to deny the political rights and obligations conferred and imposed by nativity; for our laws do not pretend to create or enact them, but do assume and recognize them as things known to all men, because pre-existent and natural, and therefore things of which the laws must take cognizance. Acting out this guiding thought, our Constitution does no more than grant to Congress (rather than to any other department) the power “to establish a *uniform rule* of naturalization.” And our laws made in pursuance thereof indue the made citizen with all the rights and obligations of the natural citizen. And so strongly was Congress impressed with the great legal fact that the child takes its political status in the nation where it is born, that it was found necessary to pass a law to prevent the *alienage* of children of our known fellow-citizens who happen to be born in foreign countries. The act of February 10, 1855, (10 Statutes, 604,) provides that “persons,” (not *white* persons,) “persons heretofore born, and hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were, or shall be at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.”

“SEC. 2. *And be it further enacted*, That any woman who might lawfully be naturalized under the existing laws, married or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.”

But for that act, children of our citizens who happen to be born at London, Paris, or Rome, while their parents are there on a private visit of pleasure or business, might be brought to the native home of their parents, only to find that they themselves were aliens in their father's country, incapable of inheriting their father's land, and with no right to demand the protection of their father's Government.

That is the law of birth at the common law of England, clear and unqualified; and now, both in England and America, modified only by statutes made from time to time, to meet emergencies as they arise.

Every citizen of the United States is a competent member of the nation, with rights and duties, under the Constitution and laws of the United States, which cannot be destroyed or abridged by the laws of any particular State. The laws of the State if they conflict with the laws of the nation are of no force. The Constitution is plain beyond

cavil upon this point. Article 6: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties, &c., shall be the supreme law of the land, and the judges in *every State* shall be bound thereby, anything in the constitution or laws of *any State* to the contrary notwithstanding." And from this I assume that every person who is a citizen of the United States, whether by birth or naturalization, holds his great franchise by the laws of the United States, and above the control of any particular State. Citizenship of the United States is an integral thing, incapable of legal existence in fractional parts. Whoever, then, has that franchise is a whole citizen and a citizen of the whole nation, and cannot be (as the argument of my learned predecessor seems to suppose) such citizen in one State and not in another.

I fully concur in the statement that "the description, *citizen of the United States*, used in the Constitution, has the same meaning that it has in the several acts of Congress passed under the authority of the Constitution." And I freely declare my inability to conceive of any second or subordinate meaning of the phrase as used in all those instruments. It means in them all the simple expression of the political status of the person in connection with the nation—that he is a member of the body-politic. And that is all it means, for it does not specify his rights and duties as a citizen, nor in any way refer to such "rights, privileges, and immunities" as he may happen to have, by State laws or otherwise, over and beyond what legally and naturally belong to him in his quality of citizen of the United States. State laws may, and do—nay, must—vest in individuals great privileges, powers, and duties which do not belong to the mass of their fellow-citizens, and, in doing so, they consult discretion and convenience only. One citizen, who happens to be a judge, may, under proper circumstances, sentence another to be hanged, and a third, who happens to be governor, may grant a pardon to the condemned man, who, *as a citizen*, is the undoubted peer of both the judge and the governor.

The Constitution, I suppose, says what it means, and does not mean what it does not say. It says nothing about "the high characteristic privileges of a citizen of the State," (of Virginia, or any other.) I do not know what they were; but certainly in Virginia, for the first half of the existence of the commonwealth, the right of suffrage was not one of them. For during that period no man ever voted there *because* he was a free white adult male citizen. He voted on his freehold, in land; and no candidate, in soliciting his election, appealed to the people or to the citizens, but to the *freeholders* only, for they alone could vote.

(F.)

Chief Baron Pigott's refusal of a mixed jury in Warren's case.

THE CHIEF BARON. My learned brother and I do not entertain the least doubt as to the course we ought to adopt in reference to this proceeding. It is essential to sustain the application; and, assuming the court has the power to grant it, the practice has been invariably to award a *jury de medietate*, as it is called, wherever an alien claims it. But assuming the authority of the court, upon which I will not now cast the slightest doubt, it is perfectly plain the person who claims a *jury de medietate lingue* must be an alien. It is *very* truly put by the counsel for the prisoner that what the prisoner contends for in the present case is, that by reason of what appears—assuming the statement to be fact—what appears stated in the suggestion, he is an alien, and he is not now under the allegiance of the Queen. I cannot allow that proposition to be put forward without meeting it with a prompt and unhesitating denial. According to the law of England, a law which has been administered without any variation or doubt from the very earliest times, he who once is under the allegiance of the English sovereign remains so forever. It would be really almost pedantry for me to cite authorities on that subject. They are familiar to every lawyer. I shall cite one English authority, and I shall then cite some American authorities of the greatest weight and highest reputation. In the first volume of Blackstone's Commentaries, pages 269 and 270, the law is thus stated:

"Allegiance, both express and implied, is, however, distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from natural-born subjects. This is a tie which cannot be severed or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China owes the same allegiance to the King of England there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed, the natural-born subject of one prince, to whom he owes al-

legiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters; and it is unreasonable that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince."

Blackstone then proceeds to show that local allegiance, which by foreigners is due to the monarch, continues so long as the foreigners reside within the kingdom. The maxim of the law on this subject, referred to by Sir Michael Foster, page 184 of his treatise, and referred to by a variety of other authorities, is *nemo potest exuere patriam*. I said I would only refer to one English authority. I have brought down, with a view to some possible matter which might have arisen, some American authorities; and I don't think it is useless to cite these authorities on the subject now before us. In Story's "Conflict of Laws," page 23, section 21, referring to the general maxim or rule that the laws of one State do not bind property or persons in another, he says:

"Upon this rule there is often engrafted an exception of some importance to be rightly understood. It is, that although the laws of a nation have no direct binding force or effect except upon persons within its own territories, yet that every nation has a right to bind its own subjects by its own laws in every other place. In one sense this exception may be admitted to be correct and well-founded in the practice of nations; in another sense it is incorrect, or at least it requires qualification. Every nation has hitherto assumed it as clear that it possesses the right to regulate and govern its own native-born subjects everywhere, and consequently that its laws extend to and bind such subjects at all times and in all places. This is commonly adduced as a consequence of what is called natural allegiance; that is, of allegiance to the government of the territory of a man's birth. Thus, Mr. Blackstone says, natural allegiance is such as is due from all men born within the King's dominions immediately upon their birth."

He then proceeds to quote the passage from Blackstone which I have cited. In Chancellor Kent's Commentaries, in the second volume, page 42, the following is laid down as English law. He is expounding the American law; and, expounding the American law, founded as it is on the law of England, he says—

"It is the doctrine of the English law, that natural-born subjects owe an allegiance which is intrinsic and perpetual, and which cannot be divested by any act of their own."

He then cites an English authority in the case of McDonnell, who was tried for high treason in 1746, by Lord Chief Justice Lee, and who, he says:

"Though born in England, had been educated in France, and spent his riper years there. His counsel spoke of the doctrine of natural allegiance as slavish and repugnant to the principles of their revolution. The court, however, said that it had never been doubted that a subject born, taking a commission from a foreign prince and committing high treason, was liable to be punished, as a subject, for that treason. They held that it was not in the power of any private subject to shake off his allegiance and transfer it to a foreign prince; nor was it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service without the consent of the sovereign, or refusing to leave such service when required by proclamation, is held to be a misdemeanor at common law."

Chancellor Kent then deals with the question, how far the English law prevails in America. He says:

"It has been a question [here he leaves the English law and proceeds to expound the other] frequently and gravely argued, both by theoretical writers and in frequent discussions, whether the English doctrine of perpetual allegiance applies in its full extent to this country."

That is, whether in America that doctrine is recognized. Its recognition there or repudiation could not in the slightest degree affect this country or its tribunals. Chancellor Kent then proceeds with an elaborate review of the authorities, and he closes thus, stating his view of the American law:

"From this historical review of the principal discussions in the Federal courts on this interesting subject of American jurisprudence, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States without the permission of Government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

I have thought it right to cite these two great American authorities—Mr. Justice Story in his book on the Conflict of Laws, that is, on the laws of nations as they relate to each other, and Chancellor Kent expounding the law of America, and expounding it in the first instance by an exposition of the law of England, which is its foundation. We in our courts have been in the habit of treating, not merely with respect, but with reverence, these two great lights of the laws of America. We have cited them in our courts of justice; they have been quoted in our forensic discussions. The principles laid down by them in interpreting in America the laws of England as they are adopted there, have been approved and adopted by some of the ablest judges

that have sat on the British bench. Mr. Justice Story was himself a great judge. So was Chancellor Kent; and some of the finest contributions that have ever been made to the science of jurisprudence, or to the law of England as a science, have been made by these two great men from whose works I have read these passages. I have thought it not unuseful, since I had the opportunity of doing so, of stating that this was the law as laid down by the great authorities in America, because I think it is desirable that they who in America formed views—I will say no more now than that—with respect to what is passing, or what is expected to pass, within the dominions of the Crown of England, should be aware of the obligations imposed on them if they have ever been under the allegiance of the Crown of England; and how, according to the laws of England, they may be dealt with when they are found here. For these reasons we are of opinion that the objection made by the attorney-general is well founded, and that we ought not to comply with this application, and that the prisoner is not entitled to a jury *de medietate linguæ*.

(G.)

Memorandum on Prussian laws.

[Translation.]

By the terms of section 1 of the law of 3d September, 1814, (Collections of laws for the year 1814, p. 79,) every Prussian subject who has attained the age of twenty full years is obliged to serve in the army.

In consequence, in each year all the young men of that age must present themselves at a certain time before the military commission of the circle in which they are domiciled, to be examined as to their fitness to render service, and designated, the case happening, to the detachment in which they are to be incorporated.

This obligation to present themselves for service is not extinguished by time. Whoever does not appear at the point indicated is held to serve at a more advanced age; and, if he can be got hold of, is enrolled under the flag before any other.

Service in the army in active employ lasts three years. (Section 6 of the law above mentioned.)

During the two years following, the soldier is dismissed on leave and belongs to the reserve; thenceforward he is not called into service until a war or an increase of the active force requires it.

After the expiration of these two years, the soldier passes for seven years into the first levy of landwehr, (land-guard,) which in time of peace musters only annually for some weeks of drill.

These seven years completed, the soldier becomes a member for seven years longer of the second levy of the landwehr, which is only called out in time of war.

Whoever evades the duties of the landwehr is obliged to take part therein at a later time, and his more advanced age does not exempt him from such call.

Emigration is not permitted, except with express leave from the government. This permission cannot be granted to males between seventeen and twenty-five years of age, unless they produce a certificate from the commission for recruiting the army, testifying that they do not propose to expatriate themselves for the sole purpose of evading their military obligations. (Section 17 of the law of 31st December, 1842, on the mode in which the quality of subject of Prussia is acquired and lost. Bulletin of the Laws of the year 1843, p. 15, *et seq.*)

This certificate serves also as a guide when it is required to determine if there is reason to grant to minors authority to emigrate with their parents.

Soldiers belonging to the army in active service, or to the reserve, do not obtain leave to expatriate themselves until they have been dismissed.

On the other hand, the service in the first or second levy of the landwehr does not prevent the person who may still be subject to such service from disengaging himself from the ties which bind him to his native land; one exception alone is made to this regulation, which is when the landwehr is called into active service.

Whoever leaves Prussia without permission, and thereby evades service either in the army, in active service, or the landwehr, incurs a penalty of 50 to 1,000 crowns, or incurs an imprisonment of one month to one year. (Section 110 of the Penal Code of April 14, 1851.)

But the payment of the penalty or the infliction of the punishment of imprisonment does not dispense with the obligation to render the military service. This obligation continues the rather until he who may have neglected his duty discharges it completely.

Proceedings are taken against such persons the moment it is perceived that they are

unlawfully absent, and without regard to the age they may mean time have attained.

The permission to emigrate, of which a formula is annexed to this memorandum, puts an end to the quality of Prussian subject, (section 20 of the law of December 31, 1842,) and whoever has obtained it is no longer under any obligation to serve in the army. Unless there be a formal exception, this permission embraces also the wife of the individual to whom it has been granted, as well as the minor children, who are still subject to the paternal authority.

BERLIN, January 6, 1859.

Form.

[Translation.]

The undersigned royal government certifies hereby, that a permit of emigration has been granted to, (name, profession, residence,) at his request, and for his emigration to ——— with his wife, formerly Miss ———, and the following minor children, still being under the authority of the father:

[Name and time of their birth.]

This permit of emigration causes the loss of the quality of Prussian subject from the date of its delivery, only, however, for those persons expressly named therein.

The day of ———.

ROYAL PRUSSIAN GOVERNMENT.

[SEAL.]

(No. —.)

(H.)

Report by counsel to the Vienna embassy on Austrian laws.

The qualification of an Austrian subject can be attained:

1. By way of birth. The citizenship in the Austrian States is inherent in the children of Austrian subjects from their birth. (Sec. 28 of the Austrian Civil Code.)

2. A female foreigner becomes an Austrian in marrying an Austrian subject. (Decree of the Imperial Chancery, 23d February, 1833, No. 2,596.)

3. By an expressed investing a foreigner with the rights of an Austrian subject. (Sec. 30 of the Civil Code.)

4. By accepting a situation in the public service. (Sec. 29 of the Civil Code.)

5. By an uninterrupted residence of 10 years a foreigner can obtain the quality of an Austrian subject, provided that he has during this time not suffered any punishment for crime, and that his behavior was always respectable. Only on this presumption such a foreigner is to be admitted to take the oath of an Austrian subject. (Sec. 29 of the Civil Code and Aulic Decree of 1st of March, 1833.)

6. In conformity with section 21 of the Patent, 24th March, 1832, an Austrian subject who has, without legal authorization, emigrated, and consequently lost his rights as an Austrian subject, can be re-established by the grace of His Imperial Majesty.

The rights arising from the quality as an Austrian subject cease:

1. In consequence of emigration, which can take place with or without the authorization of the competent authorities. (Patent, 24th March, 1832, No. 2,557.)

2. For females, on their marrying a foreigner. (Sec. 19 of the Patent, 24th March, 1832, No. 2,557.)

Particular remarks.—It is nearly impossible to give a distinct and coherent summary of all the laws concerning the mode of acquiring the quality of an Austrian subject, and the mode of losing it. The first and systematic dispositions regarding this matter are contained in the Austrian civil code. They have, however, experienced in the course of time so many alterations that the code can no longer be considered as the principal source regulating such matters. The above cited laws, copies of which accompany this note, contain most of the now existing rules. There are, besides, some which exercise a certain influence on the subject, even if they have not been issued with the intention to give a new rule of attaining the quality of an Austrian subject. So, for instance, the now existing law in regard to trade does no longer maintain the distinction between business requiring a regular domicile in a certain place and other undertakings. Therefore the establishing of a business requiring a regular domicile can no longer be considered as a mode of acquiring the quality of an Austrian subject. This is the more accurate, as foreigners, according to this law, are fully entitled to carry on

such business in this country without undergoing any alteration of their quality as foreigners. Further, the law concerning the communes establishes the principle that any Austrian subject must be a member of a community in the country. And as no commune (*gemeinde*) can be compelled to receive a new member against their will, it is a natural consequence that a foreigner who is about to apply for the Austrian citizenship must secure himself the reception in some Austrian community, and that he cannot obtain the citizenship itself without having secured an eventual reception in such an Austrian community.

D. J. WINIWARTER.

VIENNA, February 8, 1868.

[Inclosure 1.]

Code civil, sec. 28.

On acquiert la jouissance complète des droits civils par le droit de bourgeoisie. Le droit de bourgeoisie dans nos états héréditaires appartient, par droit de naissance, aux enfants de tout bourgeois autrichien.

[Inclosure 2.—Translation.]

Court Chancery Decree of 23d February, 1833, to all the Chief National Authorities, in pursuance of the Imperial Resolution of 26th January, 1833.

His Imperial Royal Majesty has been pleased to decide, in addition to the methods of acquiring Austrian citizenship in the General Code of Civil Law, and in accordance with section 32 thereof, and with section 19 of the Emigration Patent of 24th March, 1832, (I. G. S., No. 2,557,) that Austrian citizenship may also be acquired by a foreign woman through her marriage with an Austrian citizen.

[Inclosure 3.]

Code civil, sec. 29.

Les étrangers acquièrent le droit de bourgeoisie autrichienne en entrant dans un service public, en entreprenant une industrie dont l'exercice exige un domicile habituel dans le pays; par un séjour non interrompu de dix années dans nos états, sous la condition toutefois que, dans ce laps de temps, l'étranger ne se sera attiré aucune peine à raison d'un délit.

[Inclosure 4.]

Code civil, sec. 30.

On peut aussi, sans l'exercice d'une industrie ou d'un métier, et avant l'écoulement de dix années, se pourvoir auprès des autorités politiques pour obtenir le droit de bourgeoisie, et celles-ci pourront l'accorder suivant l'état de la fortune, la capacité industrielle, et la moralité du demandeur.

[Inclosure 5.]

Abstract of an ordinance by Francis I, Emperor of Austria, respecting the emigration or expatriation and unauthorized absence of his subjects from their country, applicable to his German States, to Lombardy and Venice, Dalmatia, Galacia, and Lodomeria.

I. *Emigration or Expatriation.*—Any Austrian subject who leaves his own country for a foreign state without the intention of returning is to be considered as an emigrant.

II. *Lawful Emigration.*—Those who wish to emigrate must apply to the proper authority to be released from their Austrian citizenship. They must prove that they are self-dependent, and in the free exercise of their rights; they must state what members of their family are to emigrate with them; prove that they have all fulfilled their military liabilities; and show that no hinderances exist in regard to public duties. Should the application be rejected, recourse may be had to the Privy Council.

III. *Unauthorized Expatriation*.—Those who go to a foreign country without leave, with the expressed or apparent intention to return no more, are to be considered as unauthorized emigrants. Such intention is shown by the acceptance of foreign citizenship, or a foreign, civil, or military office without special permission, by joining a foreign religious institution or other association out of the empire, requiring personal attendance; by staying abroad for five years without having property or business there requiring such absence, and if the family and property of the emigrant be withdrawn from the country; by staying abroad for ten years without the previous conditions; by non-obedience to a summons of recall to the Austrian states, issued by the authorities. The five and ten years' periods are not applicable to Austrian subjects residing in states with which Austria has treaties of free emigration.

IV. *The Effects of Emigration*.—Those who emigrate with permission lose their character as Austrian subjects and are treated as foreigners. Those who emigrate without permission lose their rights of citizenship, and are liable to all the legal consequences of that loss; they lose the rank and advantages which they held in Austria, and are struck off the registers; they can neither acquire nor transfer property where this law applies; any previous testamentary dispositions with regard to such property become void; their inheritances go to the next heir after them. Their property is sequestered without prejudice to the claims thereon. Their children or descendants resident in the State are suitably maintained out of the sequestered property. The net overplus goes to increase the property, the whole of which reverts to the heirs at the death of the expatriated owners. In special cases the sovereign can allow the children to enjoy the sequestered property.

V. *The Children of Unauthorized Emigrants*.—Those who are born before sentence has been passed against the father do not lose their Austrian citizenship or their position during their minority, nor for 10 years after coming of age if the father be still living; nor for one year after his death, if within the 10 years; nor for three years after coming of age if the father die before they do so; and they enter upon their full rights if they return to the Austrian states within those periods. This favor is also applicable to children sent to reside abroad by an Austrian subject living himself in the country. Such children are, however, to be looked upon as foreigners if they have acquired citizenship abroad, or if they do not claim the reserved rights within the prescribed periods.

VI. *Female Subjects married to Foreigners*.—They lose the Austrian citizenship on such marriage, and if they become widows, can only regain it in the same way as any female foreigner.

VII. *Rehabilitation*.—Citizenship can only be reconferred on unauthorized emigrants by permission of the sovereign; but those who have emigrated with permission may regain it in the manner prescribed in the General Code of Civil Law. Such regained citizenship is only available in regard to subsequently acquired rights.

VIII. *Unauthorized Absence*.—Subjects who go out of the state without passports or permission, or who stay away longer than the time fixed, are considered to be absent without authority; and if they cannot justify themselves they are liable for that absence alone to a penalty of from five to fifty florins, or imprisonment for from three to fourteen days, and to double the amount of fine and one or more fast-days during the imprisonments, if the absence continue for longer than three months.

IX. *Proceedings against Unauthorized Emigrants*.—The absentees are to be summoned to appear within a certain time by edicts duly promulgated in newspapers and in the neighborhoods to which they belong. If they do not appear within the appointed period proceedings are taken against them in the civil courts by order of the government, and their property is sequestered.

X. *Proceedings against Unauthorized Absentees*.—The absentee is first to be summoned by an edict to answer for himself within three or six months, according to the circumstances; he may justify himself during those periods; if he does not, judgment is passed against him by the competent court. Appeals are allowed to the superior authority.

XI. *Provisions applicable to the proceedings in both cases*.—If the absentee or emigrant be accused of any criminal act, proceedings are taken in the criminal court, and the civil proceedings are stayed meanwhile. The judgment in the criminal proceedings is sent to the civil court for its sentence on the absence or expatriation. The sequestration is operative during the criminal proceedings.

XII. *Transitory provisions*.—Expatriation proceedings pending at the promulgation of this ordinance are to be adjudged according to it; but if former laws awarded a milder punishment, that only is to be inflicted. Sentences passed before the promulgation of this ordinance remain in full force.

The enactments of the general civil code, as well as all military conscription and police laws applicable to absentees or emigrants retain their full force and validity; all other laws and regulations on the subject are hereby annulled.

VIENNA, 24th March, 1832.

[Inclosure 6.—Translation.]

Court Chancery Decree of 1st March, 1833, to all the Chief Authorities of the Country.

His Imperial Royal Majesty has been pleased to command by supreme resolution of the eighth of February 1833, that from henceforth Austrian citizenship shall not be acquired by a foreigner through an uninterrupted residence of full 10 years in the countries for which the general code of civil law is binding, until he shall have given the requisite proof thereof to the chief national authority of his last dwelling-place; shall have taken the citizen's oath, by order of that authority, either to itself or at the proper district court, and shall have received a certificate of his having done so,

The foreigner shall not, however, be allowed to take that oath until the aforesaid chief national authority has been fully convinced that throughout the said time, not only has he not rendered himself liable to punishment for any crime, but that his conduct has always been peaceful, obedient to the laws and ordinances of the constituted authorities, and well-mannered, and that by his demeanor and the known tenor of his thoughts, he has never given any real ground for suspicion or complaint.

On the other hand, those foreigners who have, on the day of the publication of this supreme resolution, already completed the 10 years' uninterrupted abode in the said countries, are to be allowed to relinquish the Austrian citizenship thereby acquired, by giving proof that they had no intention of becoming Austrian citizens; this proof must, however, be produced absolutely at the latest within six months from the publication of this supreme resolution, as after that time it will no longer be allowed.

I.—Naturalization act of 1844.

[*Omitted: the provisions of the act of 1870 (printed ante) having been substituted for it.*]

K.—British diplomatic and consular circulars. (*Omitted.*)

L.—Extracts from Mr. Vernon Harcourt's letters. (*Omitted.*)

M.—Report of the Committee on Foreign Affairs concerning the rights of American citizens in foreign states, in the House of Representatives, January 27, 1868.

[*N. B.—Reference for this report is made to the documents printed by order of Congress.*]

N.—Naturalization statutes.

N. B.—The act of 1870, *ante*, is deemed to be ample to give a knowledge of the present legislation of Great Britain. It has not been thought necessary to reprint this title.

APPENDIX No. II.

DISABILITIES OF ALIENS.—REPORTS FROM FOREIGN STATES.

The accompanying circular was sent from the foreign office to Her Majesty's representatives at European courts and in the United States:

FOREIGN OFFICE, *June 16, 1868.*

"I have to instruct you to furnish me, with as little delay as possible, with a report for the naturalization commission, on the disabilities, if any, to which aliens residing in ——— are subjected by ——— law;" and the following dispatches were received in reply:

AUSTRIA.

VIENNA, *June 23, 1868.*

MY LORD: In compliance with the instructions contained in your lordship's dispatch of the 16th instant, I addressed a note to Baron Beust, copy of which I have the honor to inclose, requesting the information desired by Her Majesty's government as to the disabilities of aliens, at the earliest convenience of the Austrian government, but as

some time will probably elapse before I shall receive an official reply, I instructed Monsieur Winiwarter, the legal adviser to Her Majesty's embassy, to furnish me with the Austrian law on the subject.

I inclose a copy of Monsieur Winiwarter's reply.

I have, &c.,

BLOOMFIELD.

The Lord STANLEY, M. P.,
&c., &c., &c.

VIENNA, June 22, 1868.

M. LE BARON: Her Majesty's government being desirous to obtain information for the use of the naturalization commission, now sitting in London, respecting the disabilities, if any, to which aliens residing in Austria are subjected by Austrian law, I have the honor to request your excellency's good offices in procuring the information required as soon as it can be conveniently furnished by the imperial government.

I avail, &c.,

BLOOMFIELD.

His Excellency the BARON DE BEUST,
&c., &c., &c.

VIENNA, June 22, 1868.

YOUR EXCELLENCY: In answer to the letter 21st instant your excellency addressed me, I have the honor of submitting to your excellency a memorandum containing the most important disabilities to which aliens residing in Austria are subject by Austrian law. I must state at the same time that no particular law exists by which all these disabilities could be ascertained.

There exist on the contrary many laws which prescribe that for certain professions, positions in life, and occupations, the Austrian citizenship is required. From these laws, which have been issued at very different periods, I have extracted the enumeration of cases in which aliens do not enjoy the same rights as the Austrian subjects themselves.

I might further state that my information holds only good for the so-called German provinces, that is to say, for the kingdoms and countries represented by the Reichsrath. With regard to Hungary I can only say that a new law regulating the position of the Hungarian citizen and of foreigners is to be discussed in the two houses, but has not yet passed.

I have, &c.,

D. WINIWARTER.

The Lord BLOOMFIELD,
&c., &c., &c.

LEGAL ADVICE.

The rights and the legal position of aliens residing in Austria are essentially regulated by § 33 of the Austrian civil code, which runs as follows:

"Foreigners have in general equal civil rights and obligations with the natives if the quality of a citizen is not expressly required for the enjoyment of these rights. Foreigners must also, in order to enjoy the same rights as natives, prove in cases of doubt that the state to which they belong will likewise treat the citizens of this country in regard to the rights in question like its own."

According to this law foreigners enjoy the same civil rights with the Austrian citizens, if for the enjoyment of a certain right the qualifications of an Austrian citizen are not expressly required. On the other hand they are subject to the same obligations as the Austrians. There is a fundamental exception from this general rule respecting the citizens of states which do not confer on Austrians the same rights which their own subjects legally enjoy.

A total enumeration of cases in which the Austrian citizenship is expressly required is hardly possible, and therefore I cannot guarantee that the following list of cases in which foreigners are not in possession of the same rights as Austrian subjects will be complete. I can only say that no case of any importance has been overlooked. Foreigners cannot—

1. Receive the appointment of public functionaries, (official.)
2. Nor those of advocates, notaries, or public agents.
3. Foreigners cannot be superiors of religious orders.
4. If a foreigner wishes to commence a public trade or business, it is not sufficient to give notice to the board of trade of his intended project, but a special concession of the home department is besides required.
5. Foreigners cannot be admitted to the military service.
6. They cannot be appointed guardians or committees for Austrian minors or Austrian subjects under committee.

7. They have not the right of constituency for the diets and the Reichsrath.
8. Nor have they the right of being elected as such deputies.
9. They cannot be admitted to the membership of political associations.
10. They are not authorized to act as undertakers, directors, or managers of public meetings, the object of which is the discussion of political affairs.
11. They have not the right of election for the common council and cannot be elected as such members.
12. They cannot obtain the position of a sworn broker, (agent of exchange.)
13. They cannot exercise the profession of hawker.
14. Physicians, surgeons, and midwives, as well as apothecaries, if foreigners, are not admitted to the practice of their respective professions till they have passed the legal examinations of the country.
15. Foreigners cannot be directors of public schools or educational establishments; as little can they become professors of a university or of any public institute.
16. The personal capacity of foreigners is in regard of their transactions to be judged of according to the laws of their own country, viz: Although an Austrian has become of age by completion of his 24th year, a foreigner, however, of 24 years cannot be regarded as of age if the laws of his country requires a greater number of years. In this regard the foreigners may not be able to enjoy the same rights as the Austrians.

Vienna, 22d June, 1868.

D. WINIWARTER.

BADEN.

STUTTGART, *July 14, 1868.*

MY LORD: In conformity with your lordship's instructions of the 12th June, I have the honor to inclose herewith translation of a note addressed by Baron Freydorf to Mr. Baillie, containing information with respect to the position of aliens in the Grand Duchy of Baden, from which it will be perceived that aliens are practically subject there to no disabilities whatever, except exclusion from political and municipal rights.

I have, &c.,

Lord STANLEY, M. P.,
&c., &c. &c.

G. J. R. GORDON.

[Translation.]

Within the whole compass of private rights, especially in respect to the right of acquiring and possessing property of every kind, landed property included, aliens stand according to Baden law upon a footing of complete equality with native subjects.

As regards the right of settlement and of engaging in trade or industry, the Baden government are entitled, if they please, to demand reciprocity as the condition of admission to such rights. They have, however, never as yet taken any advantage of their authority in this respect, so that in point of fact aliens residing in Baden are subject to no disabilities in regard to the right of settlement, or of engaging in trade or industry.

On the other hand, aliens are of course excluded from political rights, from offices in church and state, and from such rights as appertain to persons as members of a corporate community.

I avail, &c.

E. M. BAILLIE, Esq.,
&c., &c., &c.

FREYDORF,
&c., &c.

BAVARIA.

MUNICH, *July 10, 1868.*

MY LORD: Mr. Fenton having, on the receipt of your lordship's circular dispatch, of the 16th ultimo, applied to the Bavarian government for the information desired by your lordship, for the use of the Naturalization Commission, on the disabilities to which aliens residing in Bavaria might be subjected, I yesterday evening received in reply from Prince Hohenlohe the note of the 5th instant and the memorandum of which I have the honor to inclose herewith copies and translations.

This memorandum contains such full particulars on the legal position of foreigners in Bavaria that I have no occasion to add any further explanations on the subject.

Your lordship will perceive that Prince Hohenlohe remarks in his note that as the principles of the Bavarian poor-law and communal legislation are at present undergoing a legislative revision, it had been necessary to omit treating, in the memorandum, of the position of foreigners with respect to these two institutions.

I have, &c.,

HENRY F. HOWARD.

The Lord STANLEY, M. P.,
 &c., &c., &c.

[Translation.]

MUNICH, July 5, 1868.

The undersigned has had the honor to receive the note of the 22d ultimo, by which the royal British chargé d'affaires *ad interim*, Mr. H. P. Fenton, requested communication of the regulations in force in the kingdom relative to the disabilities to which foreigners are liable in this kingdom. The inclosure contains a review of the legal provisions which are in force in this respect, and the only remark to be made is, that the principles of the poor-law and of the communal legislation are at present undergoing a legislative transformation, on which account a discussion of the position of foreigners with regard to these two institutions has had to be omitted.

I have, &c.,

PRINCE HOHENLOHE.

Sir HENRY F. HOWARD, K. C. B.,
 &c., &c., &c.

THE LEGAL POSITION OF FOREIGNERS IN BAVARIA.

The general principle rules that a foreigner enjoys equal rights with a native of the country, to which the only exception made is where such exception is legally enacted, or when a royal ordinance applies the principle of retaliation on account of disadvantages to which Bavarian subjects are liable abroad, as compared to persons belonging to the country which imposes the disadvantages.

The legal disabilities relate to:

I.—*The domain of civil law and civil proceedings.*

While a preference to native creditors or debtors is excluded by § 34 of the code of priority of the 1st of June, 1822, in cases of bankruptcy, paragraph 8 I of the code of procedure of the 22d of July, 1819, leaves it optional to the defendant, being a native of the country, to require of the foreign plaintiff, when he does not possess any estate situated in Bavaria, the deposit of a security for the future payment of the costs of the lawsuit. With regard to foreigners, and as is the case generally when there is the danger of loss, the judicial code affords the security of arrest, which likewise then determines the *forum arresti*. In this respect, likewise, international treaties, as, for example, with Würtemberg, have introduced milder enactments in favor of the subjects of the respective states. Moreover, article 76 of the introductory law to the German commercial code places the citizens of the states of the former German Confederation on an equality with natives of the country. Foreigners are likewise capable of acquiring real property on the condition of reciprocity.

II.—*Penal law and penal procedure.*

Foreigners are subject to the Bavarian penal jurisdiction when they have either committed a penal act in the country or when they shall have been guilty beyond the Bavarian frontiers of such an act against the king, the Bavarian state, or a person belonging to it.—A, 12, penal code.

If a foreigner has been condemned in Bavaria on account of a crime, he will be expelled from the country after having undergone his punishment; the same takes place with regard to convictions on account of offenses or contraventions in the cases determined by law.—Art. 43, *loc. cit.*

In actions for libel the demand of a security for the costs from a foreign plaintiff is optional, according to article 61, section 3, of the introductory law to the penal code.

In respect to foreigners, concerning whom well-founded doubts may be entertained of their appearing before the court if summoned to do so, preliminary arrest is moreover admissible, according to article 41, section 3, *loc. cit.*, on account of any penal act.

III.—*In the domain of the constitutional and administrative law the foreigner is excluded.*

1. As not being in possession of the *Bavarian naturalization*, (*indigenat*), *from all civil rights*.—§ 9 of the first edict of the constitution.

If he acquires the naturalization, it is only after the expiration of six years that he enters into the enjoyment of the above-mentioned rights. The foreigner, as such, is therefore excluded from the active and passive electoral franchise for communal, district, provincial, and parliamentary elections, from admission into state offices and the possession of benefices; he cannot be elected as a juryman, nor as a member of a committee of taxation. Crown and superior court offices, superior military posts, are closed to the foreigner, although it is not the possession of the fullest rights of citizenship, but merely that of naturalization, which gives a claim to many of the above-named rights.

2. *The trade law of the 18th of January, 1868*, only reserves in article 2 the sanction of the state for foreign joint-stock companies, branch establishments, and other companies established for trading purposes, inasmuch as the provisions of state treaties do not determine otherwise. Even § 21 of the ordinance relative to the hawking trade, of the 28th of April of last year, places foreigners on a complete equality with the natives of the country, excepting in cases of retaliation. Foreign medical men receive from the provincial governments or from the ministry of state for the interior the permission temporarily to practice in the country. Medical men who only sojourn temporarily in Bavaria, and who are entitled to practice in their own country only, have the right of giving consultations, not however that of ordinary practice.—§ 15, ordinance of the 29th of January, 1865, concerning the medical art.

3. Article 10, section 2, of the military law of the 30th of January of this year, prohibits the permanent residence in the kingdom, as foreigners, of those emigrants who have not yet attained their 32d year.

4. Foreigners are permitted to reside in any commune of the kingdom when they can bring sufficient proof of their nationality and place of legal settlement, and when there is no legal impediment to their residence. The expulsion of a foreigner from a commune is only admissible on the same legal grounds (article 45 of the law of settlement of the 16th of April of this year) in virtue of which the expulsion of a Bavarian subject not having a right of settlement in the locality could likewise take place. It is only the ministry of the interior which, except in the aforesaid cases, is entitled to expel a foreigner from the country on grounds connected with the internal or external security of the state.

5. Only the person who possesses the Bavarian naturalization can acquire a *right of settlement* in a commune of the kingdom; foreigners are consequently excluded from it.—Article 1-10, *loc. cit.*

A foreign woman, however, who marries a Bavarian acquires thereby the naturalization (*indigenat*) and the settlement of the husband.—§ 3 of annex 1 to the constitution and article 3 of the law of settlement.

6. Foreigners can likewise marry in Bavaria when they can prove to the respective district police authorities that, according to the laws in force in the country of the husband, the contracting of this marriage is admissible, and has the same effects as if it had taken place in that country.

If the future wife is a foreigner she has to produce a permission of emigration, if such a permission is necessary according to the laws of her own country for emigration.—Article 34, &c., and article 39 of the law of settlement.

7. Foreigners, independently of cases of retaliation, and with the sole exception of those who carry on a wandering trade, or who belong to the class of journeymen, servants, and trade assistants, require no *permit for traveling*.—§ 2 of the royal ordinance of the 9th of December, 1865, respecting passports.

BELGIUM.

No. 96.]

BRUSSELS, July 4, 1868.

MY LORD: I have the honor to acknowledge the receipt of your lordship's dispatch circular of the 16th instant, instructing me to furnish you with a report on the disabilities, if any, to which aliens residing in Belgium are subjected by Belgian law.

The disabilities under which aliens labor in this country are so various that I found it necessary to apply to the government for more details than I felt myself competent to afford, but as your lordship desires that information on the subject should be supplied with as little delay as possible I herewith transmit copies of two laws which bear directly upon the residence of foreigners in Belgium, and which may be considered as embodying the material features of Belgian practice toward aliens.

The first is a law which is renewed from time to time, the last renewal being on the

7th of July, 1865, for a period of three years, investing the government with the control over the residence of foreigners. The government exercises the power of sending aliens out of the country in cases, 1st, of vagrancy, or when the resources for subsistence are not proved when required to be declared.

2d. Of scandalous, immoral, or turbulent conduct offensive to the public.

3d. Of political proceedings by agitation, writing, or conspiracy against the tranquility of a friendly state in abuse of the hospitality here afforded them.

The second¹ law in question passed this year extends the power hitherto in force for the extradition of foreigners accused or guilty of crimes committed in their own countries, and constitutes the basis of the extradition treaties of which copies were forwarded in my dispatch of January 20.

Until April, 1865, British subjects were not entitled to hold or inherit freehold property situate in Belgium. At present all foreigners in that respect are placed upon the same footing as Belgians. Further, distinctions between foreigners and natives are made in regard to judicial processes; for instance, in civil actions, a foreigner cannot obtain an order of provisional arrest either against a Belgian or another foreigner; in commercial actions he is under the same disability. But the Belgian can obtain an order of provisional arrest against a foreigner upon a simple petition through his "avoué" to the President of the Tribunal of Première Instance. In all tribunals except the Tribunal of Commerce he can be called upon at a stage of proceedings to give security for costs, unless he has letters of domicile from the King. For a foreigner to acquire the same civil position as a Belgian he requires a letter of domicile from the King. To acquire a position political as well as civil he requires an act of legislature. The letter of domicile confers on the foreigner the right of provisional arrest in all cases where a Belgian would have such rights. He cannot be called upon as plaintiff in any action to give security for costs; he is also exempt from provisional arrest except in such cases where a Belgian would not be exempt, for instance, in criminal or correctional proceedings.

The foreigner is not liable to the conscription for the army, nor is active service required of him in the Civic Guard, though, for the latter, he is called upon to contribute a pecuniary amount.

I have, &c.,

HOWARD DE WALDEN.

The Lord STANLEY, M. P., &c., &c., &c.

MINISTÈRE DE LA JUSTICE.

*Loi relative aux étrangers.*²

LÉOPOLD, roi des Belges, à tous présents et à venir, salut :

Les chambres ont adopté et nous sanctionnons ce qui suit :

ART. I. L'étranger résidant en Belgique, qui, par sa conduite, compromet la tranquillité publique, ou qui a été poursuivi ou condamné à l'étranger pour les crimes ou délits qui donnent lieu à l'extradition, conformément à la loi du 1 octobre 1833, peut être contraint par le gouvernement de s'éloigner d'un certain lieu, d'habiter dans un lieu déterminé, ou même de sortir du royaume.

L'arrêté royal enjoignant à un étranger de sortir du royaume par ce qu'il compromet la tranquillité publique sera délibéré en conseil des ministres.

ART. II. Les dispositions de l'article précédent ne pourront être appliquées aux étrangers qui se trouvent dans un des cas suivants, pourvu que la nation à laquelle ils appartiennent soit en paix avec la Belgique :

1°. À l'étranger autorisé à établir son domicile dans le royaume.

2°. À l'étranger marié avec une femme belge, dont il a des enfants nés en Belgique pendant sa résidence dans le pays.

3°. À l'étranger décoré de la croix de fer.

ART. III. L'arrêté royal porté en vertu de l'art. 1^{er} sera signifié par huissier à l'étranger qu'il concerne.

Il sera accordé à l'étranger un délai qui devra être d'un jour franc au moins.

ART. IV. L'étranger qui aura reçu l'injonction de sortir du royaume sera tenu de dé-

¹ Not printed for the Commission.

² Chamber des représentants, session de 1864-1865 : Documents parlementaires. Exposé des motifs et texte du projet de loi. Séance du 17 novembre 1864, pp. 108. Rapport. Séance du 7 juin 1865, pp. 833-836. Annales parlementaires. Discussion générale. Séances des 22 juin 1865, pp. 1235-1246 ; 23 juin, pp. 1247-1257 ; 24 juin, pp. 1259-1270 ; 27 juin, pp. 1271-1283 ; et 28 juin, pp. 1285-1296. Discussion des articles et adoption. Séance du 29 juin, pp. 1297-1311.

Senat :—Documents parlementaires. Rapport. Séance du 30 juin 1865, p. lxxii. Annales parlementaires. Discussion générale. Séance du 4 juillet 1865, pp. 526-527. Discussion des articles et adoption. Séance du 5 juillet pp. 529-530.

signer la frontière par laquelle il sortira ; il recevra une feuille de route réglant l'itinéraire de son voyage et la durée de son séjour dans chaque lieu où il doit passer. En cas de contravention à l'une ou l'autre de ces dispositions, il sera conduit hors du royaume par la force publique.

ART. V. Le gouvernement pourra enjoindre de sortir du royaume à l'étranger qui quittera la résidence qui lui aura été désigné.

ART. VI. Si l'étranger auquel il aura été enjoint de sortir du royaume rentre sur le territoire, il pourra être poursuivi et il sera condamné, pour ce fait, à un emprisonnement de quinze jours à six mois ; et à l'expiration de sa peine, il sera conduit à la frontière.

ART. VII. La présente loi ne sera obligatoire que pendant trois ans, à moins qu'elle ne soit renouvelée.

Promulguons la présente loi, ordonnons qu'elle soit revêtue du sceau de l'état, et publiée par la voie du Moniteur.

Donné à Laeken, le 7 juillet 1865.

LÉOPOLD.

Par le roi :
Le ministre de la justice,
VICTOR TESCH.

Scellé du sceau de l'état :

Le ministre de la justice,
VICTOR TESCH.

BRUSSELS, *July 16, 1868.*

MY LORD : With reference to my dispatch of the 4th instant, I have the honor herewith to inclose a copy of a note which I have received from the minister of foreign affairs, affording the information regarding the disabilities which affect aliens in this country, which was desired for the use of the naturalization commission in your lordship's dispatch of the 16th ultimo.

I have, &c.,

HOWARD DE WALDEN AND SEAFORD.

The Lord STANLEY, M. P., &c., &c., &c.

BRUXELLES, *13 juillet 1868.*

MY LORD : Sous la date du 20 juin dernier votre excellence m'a exprimé le désir de recevoir des renseignements sur les incapacités légales auxquelles sont soumis, en Belgique les étrangers qui y résident.

En ce qui concerne les droits politique, my lord, les étrangers en sont exclus. Ils ne sont ni électeurs ni éligibles pour la formation des corps politiques. Ils ne peuvent être nommés à des fonctions publiques ni être témoin dans un acte notarié. (Art. 9, loi 25 ventose an XI.)

L'étranger naturalisé est assimilé au Belge. Toutefois la loi exige la grande naturalisation pour être électeur ou éligible pour la formation des chambres législatives. (Art. 1 et 41 de la loi du 3 mars 1831.)

Quant aux droits civils, l'étranger jouit en Belgique des mêmes droits que ceux qui sont accordés aux Belges par les traités de la nation à laquelle l'étranger appartient. (Article 11 du code civil.)

L'étranger qui a été admis par autorisation royale à établir son domicile en Belgique y jouit de tous les droits civils tant qu'il continue d'y résider. (Article 10 du même code.)

En dehors et abstraction faite des cas prévus par ces deux dispositions la condition des étrangers n'est déterminée par aucune règle bien certaine, et est diversement appréciée dans la doctrine et la jurisprudence.

Pour ce qui est des incapacités auxquelles ils peuvent être soumis la loi n'a expressément déterminée que la suivante :

L'étranger demandeur dans un procès en matière civile est tenu de donner caution pour le paiement des frais et dommages-intérêts résultant du procès, à moins qu'il ne possède en Belgique des immeubles d'une valeur suffisante pour assurer ce paiement. (Article 16 du code civil.) L'étranger est passible de la contrainte par corps pour l'exécution de tout jugement de condamnation, conformément à l'article 10 du 21 mars 1859.

Aux termes de l'article 11 de cette loi, il peut même être arrêté provisoirement avant le jugement de condamnation, en vertu d'une ordonnance du président du tribunal de 1re instance ; mais la législature se trouve actuellement saisie d'un projet de loi portant l'abolition de la contrainte par corps même à l'égard des étrangers.

L'étranger débiteur n'est pas admis au bénéfice de la cession de biens, (article 905, c. proc. civile.)

Les étrangers ont le droit de succéder, de disposer, et de recevoir de la même manière

que les Belges dans toute l'étendue du royaume. Dans le cas de partage d'une même succession entre des cohéritiers étrangers et Belges, ceux-ci prélèvent sur les biens situés en Belgique une portion égale à la valeur des biens situés en pays étrangers dont ils seraient exclus à quelque titre que ce soit en vertu des lois et coutumes légales. (Loi du 27 avril 1867.)

L'étranger peut être expulsé du royaume dans les cas prévus par la loi du 7 juillet 1867, prorogée récemment.

Enfin l'étranger peut être extradété dans les cas prévus par la loi d'extradition.

Veuillez agréer, &c.,

(Signé pour le ministre absent)

le Secrétaire Général,

BARON LAMBEMONT.

Lord HOWARD de WALDEN et SEAFORD, G. C. B.

DENMARK.

COPENHAGEN, *June 27, 1868.*

MY LORD : With reference to your lordship's dispatch of the 16th instant, I have the honor to inclose a copy of a note which I have received from Count Frijs, in reply to my inquiries on the position of aliens in Denmark.

It appears from the statements of his excellency that foreigners resident in this country enjoy the same private rights as natives. They are, however, entirely excluded from all political rights whatever, and are debarred from all employments, civil or military, under the Crown. His excellency's note passes in review these disabilities, and seems to contain all the information which I was ordered by your lordship to procure.

I have, &c.,

CHARLES LENNOX WYKE.

The Rt. Hon. Lord STANLEY, M. P.

COPENHAGUE, *le 25 juin 1868.*

MONSIEUR LE CHEVALIER : En vous remettant sous ce pli la circulaire dans laquelle Stanley vous demande des renseignements sur la position des étrangers établis en Danemark, j'ai l'honneur de vous informer que pour ce qui regarde les droits particuliers et privés il n'existe aucune différence entre la condition des étrangers domiciliés dans le pays et celle des nationaux. Par contre, les droits politiques sont réservés aux seuls nationaux. Pour entrer au service de l'état comme employé, pour prendre part aux élections des membres de la représentation nationale ou des conseils municipaux, enfin, pour siéger dans ces assemblées la qualité de national est indispensable. Cette qualité revient de droit à tout individu né dans le pays, quelle que soit la nationalité des parents, sauf les cas où le séjour des parents n'est que temporaire; autrement il faut qu'une loi spéciale et nominative accorde la naturalisation à celui qui veut l'obtenir.

Je crois devoir encore ajouter, pour compléter les informations dont il s'agit, que d'après les règlements des chapitres de chanoinesses fondés en Danemark la nationalité danoise est de même requise chez les personnes qui désirent être admises dans ces établissements.

Veuillez agréer, &c.,

(Signed)

À Sir CHARLES WYKE,

f.c., f.c., f.c.

FRIJS.

BRITISH LEGATION,

Copenhagen, July 30, 1868.

MY LORD : As a supplement to my dispatch of the 27th ultimo, on the position of aliens in Denmark, I have the honor to inclose herewith, at the request of the naturalization commission, the written opinion of Mr. Brock, a distinguished Danish lawyer, with reference :

1st. To the oath required of aliens entering on certain professions.

2dly. Whether the birth in Denmark of a son of an alien constitutes a Danish subject ?

Your lordship will see by the inclosed document that—

1st. The "Borgherskab" or Burgherbur oath was abrogated in 1859. The oath now taken by brokers, translators, &c., is non-political, and limited to the faithful performance of their office.

2d. The son of an alien born in Denmark is considered a Dane to all intents and purposes so long as he remains in Denmark.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P.,

f.c., f.c., f.c.

COPENHAGEN, July 26, 1868.

SIR: Your excellency has asked my opinion on the following questions:

1st. Is the "Borgerbur" oath still required for entering on certain professions, and, if so, what professions:

2d. Does the fact of birth in Denmark constitute a son of an alien a Danish subject?

Answer. 1st. The "Borgerbur" oath required by the Danish law for entering on professions of different kinds has been abolished by the law of December 29, 1857. The oath still taken by brokers, translators, and such persons of public trust, that they will faithfully perform the duties imposing on their office, has no influence upon their situation as subjects of the Danish Crown, and is no oath of allegiance.

2d. The son of an alien, born in Denmark, is regarded a Dane, if he remains here.

I have, &c.,

GUSTAV BROCK,
*Advocate of the Supreme Court.*Sir CHARLES L. WYKE, K. C. B.,
&c., &c., &c.

FRANCE.

PARIS, June 29, 1868.

MY LORD: I have the honor to inclose herewith a copy of a report by Mr. Treitt, legal adviser of this embassy, upon the disabilities to which aliens residing in France are subjected by law, which I requested that gentleman to draw up upon receiving your lordship's dispatch of the 16th instant.

I have, &c.,

LYONS.

The Right Hon. Lord STANLEY,
&c., &c., &c.

La question posée par le foreign office est la suivante:

"Quelles sont les incapacités auxquelles les étrangers résidant en France sont sujets selon la loi de ce pays?"

Il y a une distinction à faire:

1°. Entre les étrangers résidant simplement en France; et

2°. Entre les étrangers admis par autorisation du gouvernement à établir leur domicile en France.

La loi considère comme étrangers ceux qui sont nés de parents étrangers soit à l'étranger, soit en France, et qui n'ont pas été naturalisés.

La condition des étrangers a varié selon les diverses législations qui ont régné sur la France; mais dans le présent document, la position des étrangers est brièvement exposée, telle que la font les lois, la doctrine, et la jurisprudence actuellement en vigueur.

§ I. Des étrangers simplement résidant en France, et n'ayant ni demandé, ni reçu l'autorisation d'établir leur domicile en France.

Leurs capacités.—Tous les étrangers, sans la moindre restriction ont, en France, le droit de succéder, de disposer, de recevoir; il n'y a aucune distinction entre les biens meubles et les biens immobiliers; l'égalité entre les nationaux et les étrangers est absolue, que les étrangers soient en France ou hors de France. Cet état de choses existe depuis la loi du 14 juillet 1819, qui a abrogé les articles 726 et 912 du code Napoléon, et aboli tous les droits qui frappaient les étrangers, tels que droits d'aubaine, &c.

Cependant cette loi contient une seule restriction qui est toute d'équité:

"Dans le cas de partage d'une même succession entre des cohéritiers étrangers et français, ceux-ci prélèveront sur les biens situés en France une portion égale à la valeur des biens situés en pays étranger, dont ils seraient exclus, à quelque titre que se soit, en vertu des lois et coutumes locales."

Les étrangers comme les Français peuvent acquérir des biens en France, les hypothéquer, les aliéner, et faire à leur égard tous les contrats permis par la loi.

Ils ont le droit de prescription.

Le commerce et l'industrie sont absolument libres pour les étrangers; ils exercent le droit industriel à l'égal les regnicoles et peuvent obtenir toutes espèces de concessions; même celle de mines.

La propriété industrielle, artistique et littéraire a été objet de traités internationaux.

Dans les communes où les étrangers résident, ils participent à certaines jouissances communales, telles que la vaine pâture, la distribution du bois des forêts appartenant aux communes, &c.

En un mot, on peut dire que, en ce qui concerne le statut réel et le droit de propriété, les étrangers sont dans une condition identique à celle des Français.

Quant au *statut personnel*, ils jouissent de tous les droits de famille comme père, fils, et époux.

Ils ont le droit de chasse et de pêche et de port d'armes.

Ils ont la liberté du culte et la liberté individuelle et impriment leurs opinions comme les Français eux-mêmes.

Des auteurs accredités soutiennent qu'ils peuvent se créer une famille légale par l'adoption d'enfants selon les lois de France, qu'ils peuvent être tuteurs et jouir de tous les droits dont la loi a entouré la protection de la famille.

Leurs incapacités.—Mais les étrangers sont exclus de toutes les fonctions politiques gouvernementales. Ils ne peuvent être témoins dans certains actes authentiques puisque la loi a dit : *Les témoins seront majeurs français, du sexe masculin, &c.*

Ils ne peuvent être arbitres dans les litiges parceque l'arbitrage en fait des juges temporaires.

Il faut aux étrangers une autorisation spéciale pour exercer la pharmacie, la chirurgie, ou la médecine.

Les emplois publics, comme prêtres dans les divers cultes, comme directeurs de postes et d'autre positions, qui exigent un serment au chef de l'état, sont interdits aux étrangers; c'est pourquoi ils ne peuvent être ni avocats, ni notaires, ni avoués, &c., &c.

Ils ne font point partie de la garde nationale, ni de l'armée, ni d'aucun jury.

Si les étrangers sont demandeurs en justice, le défendeur peut leur demander la *caution judicatum solvi*, à moins qu'il ne s'agisse de matières commerciales, où cette caution n'existe pas. Avant la récente abolition de la contrainte par corps, les étrangers pouvaient être arrêtés préventivement.

En cas de faillite, les étrangers jouissent des mêmes droits que les Français, seulement ils ne sont pas admis à la cession de leurs biens à leurs créanciers pour se libérer ainsi de toutes leurs dettes.

D'éminents juristes pensent que même l'état de guerre ne suspend point contre l'étranger son droit d'actionner le Français devant les tribunaux de France pour des obligations, même contractées à l'étranger.

En matière civile, le tribunal français peut refuser sa juridiction à deux étrangers, mais en matière commerciale, deux étrangers ont droit à la justice française dans tous les cas.

Enfin la loi du 3 décembre 1849 (article 7) autorise le gouvernement à expulser du territoire de l'empire les étrangers qui y voyagent ou y résident.

Ce droit du gouvernement est arbitraire et absolu.

§ II. Des étrangers domiciliés ou admis à l'exercice des droits civils par autorisation gouvernementale.

L'étranger, à moins d'obtenir des lettres de grande naturalisation accordées seulement à de grands services exceptionnels, ne peut être naturalisé en France qu'après un stage de dix¹ années qui courent du jour où le gouvernement lui a accordé le domicile.

L'admission au domicile fait cesser en faveur de l'étranger qui l'a obtenue certaines incapacités qui frappent l'étranger simplement résidant. L'admission au domicile n'enlève pas la qualité d'étranger, mais il donne aux enfants nés en France de parents étrangers, le droit de réclamer à leur majorité la qualité de Français, sans autre formalité que de se soumettre aux charges des lois françaises, tels que le recrutement, &c. (Article 9 du code Napoléon.)

Les étrangers admis au domicile jouissent de tous les droits civils; ce sont les termes formels de l'article 13 du code Napoléon; il en résulte que même, avant la loi du 14 juillet 1819 ci-dessus rapportée, l'étranger domicilié était capable de recevoir, de disposer, &c., comme le Français lui-même; il peut procéder en justice sans être soumis à la caution *judicatum solvi*.

Il est admis au bénéfice de la cession de ses biens à ses créanciers pour se libérer de toutes ses dettes.

Avant l'abolition de la contrainte par corps, l'étranger domicilié n'y était sujet que dans les mêmes cas que le Français; et il pouvait lui-même exercer la contrainte par corps contre les étrangers.

Bref, sauf les droits politiques, l'étranger domicilié jouit des droits civils comme le regnicole; cependant comme il est toujours étranger, il ne peut être témoin dans certains actes authentiques ni être arbitre puisque l'arbitrage est une juridiction.

Le domicile acquis en France ne délie pas l'étranger des obligations que le statut personnel de son pays lui impose ni de ses devoirs envers sa mère patrie.

Le droit de domicile peut être retiré à un étranger par le gouvernement sur un avis du conseil d'état.

Mais malgré l'admission au domicile le droit d'expulsion écrit dans la loi du 3 décembre 1849 reste tout entier aux mains du gouvernement.

¹ Reduced to three years by the law of the 29th of June, 1867, (Memorandum,) C. S. A. A.

Certains pays ont fait avec la France des traités particuliers pour la jouissance des droits civils. Ainsi un traité avec la Sardaigne du 24 mars 1760 dispense les sujets Sardes de la caution *judicatum solvi*.

Il y a d'autres traités qui réservent à des pays étrangers le traitement de la nation la plus favorisée.¹

Mais de pareils traités sont presque superflus, en présence du petit nombre d'incapacités qui frappent les étrangers en France et qui appartiennent presque toutes à l'ordre politique ou aux fonctions qui entraînent la prestation d'un serment au souverain, car de tout ce qui vient d'être dit on peut conclure que par suite des progrès de la législation et de la jurisprudence il n'y a plus guère de différence entre l'étranger *résidant domicilié*, si ce n'est que ce dernier n'est plus soumis à la caution *judicatum solvi*, et que ses enfants nés en France ont une plus grande facilité pour acquérir la qualité de Français.

En résumé, l'état et la capacité de l'étranger sont réglés par les lois de son pays; son statut personnel l'accompagne partout; mais en France cet étranger est capable, comme le regnicole, de tout les contrats réels ou personnels reconnus par la loi française; au point de vue du *droit privé* la condition de l'étranger soit *résidant* soit *domicilié*, et la condition du Français ne diffèrent pas beaucoup aujourd'hui.

La jurisprudence tend incessamment à améliorer encore la condition des étrangers; on ne leur refuse plus que les droits qui leur sont expressément déniés par des lois non encore modifiées; et ils jouissent d'une manière absolue de tous les droits que dérivent du droit des gens.

Fait à Paris le 28 juin 1868.

(Signé)

W. TREITT,
Avocat à la Cour Impériale,
Legal Adviser to the British Embassy.

GREECE.

ATHENS, July 16, 1868.

MY LORD: In compliance with the instructions contained in your lordship's dispatch of the 16th ultimo, I have the honor to transmit herewith to your lordship a copy of a report drawn up by the lawyer employed by this legation, on the subject of the disabilities to which aliens residing in Greece are subjected by Greek law.

I have, &c.,

E. M. ERSKINE.

The Rt. Hon. Lord STANLEY, M. P., &c.

Notice sur les incapacités légales des étrangers en Grèce.

1°. En droit public:

Aux termes de l'art. 3 du code civil grec, les lois d'ordre public (de police et de sûreté) obligent tous ceux qui se trouvent en Grèce, par suite, les Grecs aussi bien que les étrangers. L'hospitalité, que l'étranger reçoit en entrant dans le pays, l'oblige à respecter les lois et les arrêtés de police.

Comme conséquence de ce principe l'art. 37 du code pénal dispose que, dans tous les cas où les tribunaux de répression soumettaient les Grecs à la surveillance de la police, les étrangers sont expulsés du territoire par l'autorité administrative.

Bien qu'en principe général le droit de répression ne puisse s'exercer qu'à raison d'actes commis sur le territoire hellénique, l'art. 2 du code d'instruction criminelle consacre une extension à cette règle à l'égard des étrangers qui peuvent être poursuivis, jugés et punis en Grèce: 1° pour crimes et délits commis à l'étranger contre un Grec, 2° pour crimes de haute trahison contre l'état, pour fabrication de fausse monnaie nationale, ayant cours en Grèce, pour contrefaçon de sceau de l'état, ou complicité à ces actes. Mais leur punition présuppose leur extradition ou leur arrestation dans le pays.

Les étrangers ne sont livrés à un gouvernement étranger pour crimes et délits commis à l'étranger, que s'il y'a une loi spéciale ou un traité à cet égard.

2°. Quant aux droits politiques:

Comme on ne saurait avoir deux patries, on ne peut être citoyen de deux états; par conséquent l'étranger ne peut exercer en Grèce les droits qui présupposent la qualité de citoyen. Il ne peut donc être membre de la chambre des députés (art. 70 de la constitution), des conseils provinciaux (art. 5 de la loi du $\frac{1}{2}$ décembre 1836 sur les conseils provinciaux), ou municipaux (art. 13 de la loi du 27 décembre 1833 des communes), ni se présenter aux assemblées électorales en qualité d'électeur. (art. 4 de la loi du 19 novembre 1864 sur l'élection des députés), ni d'éligible (art. 7 de la constitution et même art. 4 de la loi ci-dessus).

¹ Suisse, 12 juillet 1828; Bolivie, 9 décembre 1834; Porte, 25 mars 1838; Mexique, 9 mars 1839; Venezuela, 25 mars 1843; Nouvelle Grenade, 28 octobre 1844.

Ils ne peuvent être nommés aux fonctions publiques (art. 3 de la constitution) ni exercer la profession d'avocat que la loi hellénique y assimile (art. 142 de la loi sur l'organisation des tribunaux et du notariat), ni celle de juré.

Aux termes de l'art. 112 du code de procédure civile, l'étranger ne peut être nommé arbitre.

Quand il s'agit de constater un fait on ne saurait choisir ses témoins; ils sont donnés par les circonstances de temps et de lieu, et tout témoin présent est nécessaire et capable, à moins qu'il ne soit sujet à quelque incapacité naturelle. Les étrangers sont donc admis à déposer comme témoins devant la justice. Il en est de même des témoins des actes de l'état civil. Ici aussi il s'agit de constater un fait: la naissance, le mariage ou le décès d'un individu. Toute personne qui a assisté à ces faits est admise à les constater.

Mais l'étranger ne saurait servir de témoin instrumentaire dans un acte authentique, contrat ou testament public. Ici, en effet, il s'agit moins de rechercher des preuves que d'en créer (art. 179 de la loi sur l'organisation des tribunaux et du notariat). Les démoins participent ici à la confiance de l'acte, et cette participation est un motif d'exclusion contre l'étranger qui ne peut remplir de fonctions publiques.

3°. En droit privé :

Nous considérerons l'étranger dans cette partie de notre travail sur deux points de vue: 1°, sous celui de statut personnel; 2°, sous celui de statut réel.

§ 1°. Statut personnel.

La loi personnelle s'empare de l'homme à sa naissance pour ne l'abandonner qu'à sa mort. Elle lui donne un état, qui le suit en quelque lieu qu'il se trouve.

Ce principe est expressément consacré par l'art. 4 du code civil de la Grèce, aux termes duquel le mariage, les rapports entre ascendants et descendants, la tutelle et la curatelle sont réglés quant aux Hellènes, même résidant à l'étranger, par les lois helléniques, et quant à l'étranger, par les lois de son pays.

D'après la première partie de cet article la capacité de l'étranger pour l'acquisition de droits ou pour l'exercice d'actes légaux en général, est jugée conformément à la loi de son pays, et en cela la loi hellénique a confirmé le principe généralement admis par les législations des autres états de l'Europe, que l'état et la capacité des personnes sont régis par les lois de leur patrie. Mais le dernier § du 2^{me} al. du même article consacre une exception au principe admis en faveur des étrangers. Dans l'intérêt des citoyens Hellènes, les étrangers qui, d'après les lois helléniques auraient la capacité nécessaire pour contracter une obligation, sont reconnus avoir la capacité nécessaire à la validité des contrats passés entre eux et les Hellènes en Grèce, bien que la loi de leur pays leur refuse cette capacité.

§ 2°. Statut réel.

Les immeubles font partie du territoire de l'état, et sont par conséquent régis par la loi hellénique. Les étrangers peuvent en devenir propriétaires même sans résider en Grèce, mais ils ne peuvent les acquérir ou en disposer que conformément aux lois helléniques. C'est la disposition formelle de l'art. 5 du code civil. "La possession, la propriété et les droits réels sur des meubles ou des immeubles situés en Grèce sont réglés par les lois helléniques. La succession testamentaire ou ab intestat est régie par les lois du pays du défunt, à moins qu'il ne s'agisse d'immeubles situés en Grèce, lesquels sont, à cet égard, régis par la loi hellénique."

Ainsi l'étranger est soumis à la loi hellénique pour tout ce qui concerne la distinction des biens en meubles et immeubles, la saisie immobilière, les hypothèques, la prescription acquisitive des immeubles ou celle extinctive des actions immobilières.

La succession ab intestat d'un étranger qui se compose d'immeubles situés en Grèce, sera également réglée, pour ce qui concerne ces immeubles, par la loi hellénique d'après l'art. 5 du code civil.

Du reste, aux termes de l'article précité, les effets de la possession, de la propriété, les privilèges et des voies d'exécution sont régis par la loi hellénique même quant aux meubles.

Enfin un étranger ne peut être propriétaire d'un navire hellénique pour plus de la moitié (art. 4 de la loi du 1^{er} novembre 1836, de la navigation commerciale).

Droits privés de l'étranger.

Aux termes de l'art. 15 du code civil, l'étranger qui voudra se faire naturaliser, doit déclarer sa volonté à la municipalité du lieu où il veut établir son domicile, et habiter en Grèce pendant deux ans, s'il est Grec d'origine, et pendant trois ans, s'il appartient à toute autre nationalité. Passé ce délai et après qu'il aura été constaté que

L'étranger ne s'est point rendu coupable de crime ou de l'un des délits prévus par l'art. 22 du code pénal, il prètera par devant le Nomarque le serment de sujet Hellène.

L'étranger qui aura rendu des services importants à l'état, qui aura introduit dans le pays des inventions ou une industrie utiles, ou qui se distinguerait par des talents extraordinaires peut, dès qu'il aura fixé son domicile en Grèce, être naturalisé par une loi.

Pendant tout le temps qu'il sera nécessaire à l'étranger de résider en Grèce pour la naturalisation, il pourra être admis par le roi à la jouissance des droits civils, et dans ce cas il sera régi pour tous ses rapports légaux par les lois helléniques (art. 16 du code civil).

Les étrangers peuvent contracter mariage avec des Grecs, soit en pays étranger soit en Grèce, en se conformant quant à la capacité aux lois de leurs pays, et quant aux formalités soit à celles consacrées par la loi hellénique, soit à celles usitées dans le pays où le mariage est contracté (art. 4 et 7 du code civil).

Les mariages mixtes avec des personnes appartenant à une autre communion religieuse sont reconnus valables par la loi du $\frac{1}{2}$ octobre 1861, sur les mariages mixtes.

L'étranger ne peut être appelé à la tutelle de mineurs Hellènes, ni faire partie d'un conseil de famille les concernant (art. 30 et 49, § 6 de la loi sur la minorité, la tutelle, etc.) Mais il peut être tuteur de ses parents mineurs étrangers comme lui. Peu importe que la loi hellénique considère l'office de la tutelle comme une espèce de charge publique, réservée aux Hellènes seuls. Ce n'est pas la loi hellénique qui défère la tutelle du mineur et qui la régit, comme elle régit tous les autres droits personnels et de famille.

Un étranger peut consolider par l'usucapion une acquisition d'immeuble. C'est un mode d'acquérir qui est permis à tout possesseur de bonne foi.

L'étranger peut stipuler à son profit hypothèque sur des immeubles d'un Grec et en consentir une sur les siens au profit de ses créanciers.

Tout jugement émané d'un tribunal hellénique au profit d'un étranger lui confère le droit d'hypothèque judiciaire sur les biens de son débiteur situés en Grèce. Mais le jugement émanant d'un tribunal étranger ne confère ce droit qu'après avoir été déclaré exécutoire par le tribunal hellénique compétent.

Le mariage contracté entre une étrangère et un Grec donne à la femme un titre d'hypothèque légale pour garantie de sa dot qu'elle peut inscrire sur les immeubles de son mari.

La femme grecque qui épouse un étranger a le même droit sur les immeubles de cet étranger situés en Grèce. Quant à ceux situés à l'étranger, les droits de la femme sont réglés par la loi du pays de son mari.

Un étranger ne peut être nommé capitaine ou officier d'un navire hellénique.

Les trois quarts de l'équipage d'un navire hellénique doivent être pris parmi les Grecs, (art. 5 de la loi du $\frac{1}{4}$ novembre 1836, de la navigation commerciale).

Les matelots enrôlés en vertu de l'inscription maritime doivent être des sujets grecs (loi d'inscription maritime du 24 octobre 1856).

Aux termes de l'article 220 du code de procédure civile, et de l'art. 2 de la loi sur le timbre, de 1867, les droits d'indigence sont accordés au plaideur qui, en vertu du certificat du démarque de son domicile, constate un état d'indigence. Les étrangers ne sont point admis à jouir de ce droit, qui est considéré avoir été introduit par la loi hellénique en faveur des Grecs seulement, (circulaire du ministère de la justice du 8 juin 1837).

Tout étranger peut être poursuivi devant tout tribunal hellénique sans distinction pour des obligations contractées en Grèce ou à l'étranger envers un Hellène (art. 28 du code de procédure civile). Et *vice-versa* l'Hellène peut être poursuivi devant les tribunaux helléniques pour les obligations contractées par lui en pays étranger envers un Hellène ou en étranger.

S'il n'y a point de stipulation contraire dans les traités, l'étranger demandeur qui intente une action contre un Hellène doit, aux termes des art. 78 et 79 du code de procédure civile, fournir, s'il en est requis, caution pour les frais du procès et le dommages-intérêts. Cette obligation n'existe point dans les affaires de commerce, ou lorsque l'étranger possède en Grèce des immeubles suffisants, ou que le défendeur reconnaît une partie de la demande suffisante pour assurer le paiement des frais et des dommages-intérêts.

Tandis que le régnicole n'est soumis à la contrainte par corps que pour dettes commerciales, et pour les dettes civiles, exceptionnellement en certaines circonstances de suspicion légitime, cette mesure peut être prise contre l'étranger débiteur soit comme mesure conservatoire, soit pour l'exécution d'un jugement même pour dettes civiles en général. Bien entendu qu'elle doit être invoquée par la partie et prononcée expressément par le juge (code de procédure civile, art. 999, § 1 et 1000).

La contrainte par corps n'est point prononcée dans les affaires civiles contre l'étranger qui possède en Grèce des immeubles suffisants pour assurer le paiement ou qui donne caution.

La contrainte par corps dont le but est de forcer le débiteur au paiement peut être

évitée par le régnicole honnête mais malheureux, qui, faisant preuve de bonne volonté, et ne pouvant faire plus, abandonne tout son actif à ses créanciers, en recourant au bénéfice de compétence ou de la cession de biens. Cette mesure est refusée à l'étranger parce qu'il n'est pas possible d'en contrôler la fidélité. C'est la disposition formelle des art. 688 du code de procédure civile, et 575 du code de commerce en vigueur en Grèce.

(Signed)

G. A. RHALLY,
Avocat.

HANSE TOWNS.

HAMBURG, *June 26, 1868.*

MY LORD: By your lordship's dispatch of the 16th instant I am directed to report the disabilities to which aliens residing in the Hanse towns are subjected by the local laws. I have accordingly the honor to state as follows:

The laws of Lubeck, Bremen, and Hamburg prohibit aliens from exercising the ordinary rights of citizenship except as undermentioned. They cannot hold any office under the State, nor can they acquire lands or houses in their own names within the territories of the state. Those privileges are reserved to citizens of the state, and to the subjects of the other states of the North German Confederation, who are on the same footing as Hanseatic citizens. But a foreigner can easily purchase land in the name of a citizen as his trustee, and this is not infrequently done.

At Lubeck and at Bremen aliens are still restricted from carrying on trades unless they have first acquired the rights of citizenship. The Lubeck law of the 20th of November, 1866, and the Bremen law of 15th February, 1861, had for their object the abolition of guilds, and facilitated the admission of foreigners as citizens at less expense than heretofore. But the condition of citizenship was not removed by those laws.

At Hamburg, however, aliens are no longer under any disabilities in respect of the exercise of trades. A law issued on the 7th of November, 1864, declares that trades and industrial occupations may be carried on by foreigners not subjects of the state; and it also reduces the cost of obtaining citizenship by those aliens who desire it. Another law, dated the 30th of December, 1867, abolished the exclusive privilege of entering goods in transit, formerly reserved to Hamburg citizens. The alien merchant is, therefore, in as favorable a position as the citizen merchant in any line of business which he may think proper to enter.

There are residing at Hamburg a considerable number of persons who claim the rights of British subjects on account of their birth or descent, but who are Hamburg subjects by having acquired citizenship or by being the children of citizens, or by having been born within the territory of the state. Such persons assert a double nationality, and appear in the character of a British subject or of a Hamburg citizen, as it suits their purpose. Ought they not rather to lose their British nationality so long as they are the voluntary citizens of a foreign state?

I have, &c.,

JOHN WARD.

The Right Hon. Lord STANLEY,
&c., &c., &c.

ITALY.

FLORENCE, *December 19, 1868.*

MY LORD: With reference to Lord Stanley's dispatch of the 16th of June last, I have the honor to inclose herewith to your lordship a translation of a report which has been drawn up by Signor Corsi, legal adviser to this mission, relative to the disabilities to which aliens residing in Italy are subjected by Italian law.

I have, &c.,

A. PAGET.

The Right Honorable The Earl of CLARENDON, K. G.

[Translation.]

Memorandum on the laws which regulate the rights of aliens in Italy.

The civil capacity of aliens in Italy in regard to their private rights is as follows :

As a general rule "the alien is admitted to the enjoyment of all civil rights accorded to the citizen," (art. 3 of the Civil Code.)

If a citizen has lost his nationality before the birth of a child, the latter is considered a citizen if born in the kingdom and resident there ; but he can, within a year of the attainment of his majority, determined by the laws of the kingdom, select the quality of an alien, by making a declaration to that effect before the civil authorities of his domicile, or, if he is abroad, before the king's diplomatic or consular agents, (art. 5 of the Civil Code.)

"A child born abroad of a father who has lost his nationality before his birth is reputed an alien.

"He can, however, select the quality of a citizen provided he makes a declaration to that effect in accordance with the foregoing dispositions, and provided he fixes his domicile in the kingdom within one year of such declaration.

"If, however, he has accepted state employ in the kingdom, or serves in the army or navy, or has otherwise complied with the terms of the conscription law, without invoking exemption therefrom on the plea of being an alien, he is considered a citizen without further formalities, (art. 6 of the Civil Code.)

"When the father is unknown, the child, born of a mother who is a native, is a citizen."

"If the mother has lost her nationality before the birth of her child, the dispositions of the two preceding articles apply."

If the mother be likewise unknown, the child born in the kingdom is a citizen, (art. 7 of Civil Code.)

"A child, born in the kingdom, of an alien father who has been domiciled there for ten years uninterruptedly is considered a citizen. Residence on account of commercial affairs does not constitute domicile."

"He can, however, select the quality of alien, but the dispositions of the two first paragraphs of art. 6 are applicable to this case, (art. 7 of Civil Code.)

"An alien woman married to a citizen acquires citizenship, and retains it as a widow, (art. 9 of Civil Code.)

"An alien can also obtain citizenship by naturalization granted by law or royal decree."

"The royal decree is not effective unless registered by the civil authority of the place where the alien intends to fix or has fixed his domicile, and unless he swears before the said authority to be faithful to the king and to observe the statutes and the laws of the kingdom."

"The wife and minor children of an alien who has obtained citizenship become citizens, provided they have a fixed residence in the kingdom, but the children can select the quality of aliens by making the declaration mentioned in art. 5, (art. 10, Civil Code.)

Citizenship is lost :

1st. By a person who renounces it by a declaration to that effect before the civil authority of his domicile, and transfers his residence to a foreign country.

2d. By a person who, without the permission of his government, has accepted employment from a foreign government, or has entered the military service of a foreign power.

"The wife and minor children of a person who has lost his nationality become aliens, unless they continue to reside in the kingdom.

"They can nevertheless regain their nationality in the cases and manner described in the first paragraph of art. 14 as regards the wife, in the first two paragraphs of art. 6 as regards the children, (art. 11, Civil Code.)

"The loss of nationality, as described in the preceding article, does not imply exemption from the obligations of military service, nor from the penalties inflicted on those who bear arms against their native country, (art. 12, Civil Code.)

"The citizen who has lost his nationality from any of the causes mentioned in art. 11, regains it, provided—

"1. That he returns to the kingdom with a special permission from the government.

"2. That he renounces his foreign nationality, the employment or military service taken abroad.

"3. That he declares before the civil authorities that he intends fixing, and really does fix, his domicile in the kingdom within the space of one year, (art. 13, Civil Code.)

"A woman who marries an alien becomes an alien whenever by the fact of marriage she acquires the nationality of her husband.

"If left a widow, she regains her nationality if she resides in the kingdom, or if she

returns there and declares in both cases before the civil authorities that she wishes to fix her domicile there, (art 14, Civil Code.)

"The acquisition or resumption of nationality in the preceding cases only takes effect from the day succeeding that on which the prescribed conditions and formalities are fulfilled, (art. 15, Civil Code.)"

The law of the 15th November, 1865, for the regulation of the civil status, ordains:

Art. 44. "In the registers of citizenship are inscribed:

1st. "The declarations of a reputed alien who desires Italian nationality.

2d. "The declaration of a reputed Italian subject who selects the quality of an alien.

3d. "Declarations renouncing Italian nationality.

4th. "Declarations relative to fixing, or the intention of fixing, domicile in the kingdom.

5th. "Declarations relative to the transfer of domicile from one commune of the kingdom to another.

ART. 45. "In the said registers are transcribed the royal decrees conferring nationality.

ART. 46. "The declarations mentioned in Nos. 1, 2, and 3 of art. 44, are received by the civil authorities of the domicile of the person making them, if he resides in the kingdom, and by the diplomatic and consular agents if abroad.

"The said agents transmit, within three months after the date given them, copy of the declarations they have received to the ministry of foreign affairs, whence they are forwarded to the civil authorities of the last domicile of the person making the declaration; or, in default of that, of the last known domicile of the father.

ART. 47. "The declarations mentioned in No. 4 of art. 44 must be made before the civil authority of the place in which the person making the declaration resides, or intends residing.

ART. 48. "The declarations mentioned in Nos. 1 and 2 of art. 44 must explain the circumstances of their origin.

"The person making the declaration must further prove, by the production of his certificate of birth, or of a notarial document, that he has attained majority according to the laws of the kingdom.

ART. 49. "The declaration contained in No. 4 of art. 44 must explain the motive of its origin and the object in view.

"When a declaration is made by a widow in accordance with art. 14 of the Civil Code, she must prove her widowhood by producing a certificate of the death of her husband.

ART. 50. "Before transcribing the decree conferring nationality, the civil authority must demand from the alien an oath, according to the special rites of the religion he professes, that he will be *faithful to the king and will observe the statutes and laws of the realm*.

"The fulfillment of this formality must appear on the register.

ART. 51. "If the civil authority is requested to register said decree after a lapse of more than three months from its date, he must refuse to accept the oath and to register the decree."

With reference to the influence of foreign laws on personal capacity and family relations, art. 6 of the law of the 25th June, 1865, ordains: "The personal status and capacity and family relations are regulated by the laws of the country to which the persons belong."

As to matrimony, however, attention must be paid to the following articles of the Civil Code:

ART. 100. "A marriage celebrated in a foreign country between subjects, or between a subject and an alien, is valid, provided it be celebrated according to the established custom of that country, and provided the subject has not contravened the dispositions contained in section 2 of chapter I on this matter.

"The marriage must be notified within the realm in accordance with arts. 70 and 71. If the subject has not residence in the realm, the notification must be made in the commune of his last domicile.

ART. 101. "A subject who has contracted marriage abroad must, within three months after his return to his native country, cause his marriage to be registered by the civil authority of the commune in which he takes up his residence, under pain of a fine to the extent of one hundred lire, (francs.)

ART. 102. "The capacity of an alien to contract marriage is determined by the laws of his country.

"But an alien is subject to the impediments contained in section 2 of chapter I, on this matter.

ART. 103. "An alien desirous of contracting marriage in the realm must present to the civil authority a declaration from the competent authorities of his country, proving that according to the laws of his country there is no obstacle to the intended marriage.

"If the alien resides in the realm he must further make the notification required by the dispositions of this code."

The influence of foreign laws of property is explained in art. 7 of the said law of 25th of June, 1865, as follows:

"Personal property is subject to the law of the proprietor's country, unless the law of the country where it is situated disposes otherwise.

"Real property is subject to the laws of the place where it is situated.

Article 9 of the same law refers as follows to the form of deeds:

The extrinsic form of deeds executed between living persons, and of wills, is determined by the law of the place where they are made. The disposers or contractors may, however, adopt the forms of their own national laws, provided the latter are common to all the parties.

"The substance and effects of testamentary donations and dispositions are considered as being regulated by the laws of the disposer's country. The substance and effects of obligations are considered as being regulated by the law of the place in which the deeds were drawn, and if the contracting aliens belong to the same country, by their national laws. In every case the proof of a contrary desire holds good."

Alien successions are regulated by art. 8 of this law, as follows:

"Legitimate and testamentary successions, however, whether with reference to the order of succession, or with regard to succession rights, and the intrinsic validity of the dispositions, are regulated by the law of the person deceased, whatever may be the nature of the property, and without regard to the country of its situation."

For the forms of procedure, and the influence of foreign sentences in the realm, art. 10 in the same law ordains:

"The competency and the forms of procedure are regulated by the law of the place where sentence is given.

"The proofs of obligation are determined by the laws of the place where the deed was drawn.

"The sentences pronounced by foreign tribunals in civil matters will be executed in the realm, if declared capable of execution according to the forms established by the code of civil procedure, and if not opposed to international stipulations.

"The manner of execution of deeds and sentences is regulated by the law of the place where execution ensues."

A general clause, placed at the end of this law, (art. 12,) prevents a too extensive application of its various dispositions from clashing with the laws in force in the realm, and says:

"Notwithstanding the stipulations of the preceding articles, the deeds and sentences of a foreign country, as well as private dispositions and agreements, can in no case be derogatory of the prohibitive laws of the realm which concern persons, property, or deeds, nor of the laws which in any way regard public order and morality."

The mode of citing aliens before the tribunals is traced in the following articles of the Code of Procedure:

"ART. 105. An alien who has no domicile in the realm may be cited before the judicial authority of the realm even when absent from it—

"1st. In a question regarding real or personal property situated in the realm.

"2d. In a question of obligations arising out of contracts or deeds executed or to be executed in the realm.

"3d. In every other case in which there is reciprocity.

"ART. 106. Besides the cases indicated in the preceding articles an alien can be cited before the judicial authority for obligations contracted abroad—

"1st. If he has his residence in the realm, though not actually there.

"2d. If he happens to be in the realm, though having no residence there, provided he be personally cited.

"ART. 107. When an alien has no residence, dwelling, or chosen domicile in the realm, and no place has been fixed on for the execution of the contract, *personal or real action as regards personal property*, (*l'azione personale d' reale su beni mobili*,) takes place before the judicial authority of the place in which the plaintiff has his residence or domicile."

With reference to commercial relations, the stipulation of art. 3 of the civil code above cited, which concedes to aliens the same rights as to subjects, independently of political treaties, is to be observed.

Anonymous foreign commercial companies carrying on business in the realm must be authorized by the government like Italian ones.

A law of the 20th October, 1860, allows French anonymous companies recognized in France to operate in Italy, and to have legal standing without any special authorization.

Two diplomatic conventions, concluded on December 5, 1867, with England, and on December 8, 1867, with Russia, repeat similar dispositions as regards English and Russian commercial companies, but in the Russian convention insurance companies are excluded.

A French decree dated in September, 1860, and the above-mentioned conventions, grant full reciprocity to Italian companies in those states.

These, and in general all other foreign commercial societies, (*accomandite collective*), must publish their charter in the chancery of the tribunal of commerce of the district in which they choose a domicile.

With reference to questions of criminal law the Sardinian code has hitherto been applied in all parts of the realm except Tuscany.

The above-mentioned law of the 25th June, 1865, in art. 11, contains the following general dispositions: Criminal laws, and those of police and public security, are binding on all persons who may be within the territory of the realm.

The criminal code contains the following dispositions:

ART. 5th. "The native of the kingdom who commits on foreign territory a crime against the security of the realm, or who forges the seal, the moneys, bank-notes, obligations of the state, or documents of public credit equivalent to money, is to be tried and punished in the realm according to the provisions of the present law.

ART. 6th. "The native of the kingdom who commits on foreign territory a crime against another native of the kingdom, or against a foreigner, when he returns to the realm, is to be judged and punished according to the penalties established by the present law, which, however, may, according to circumstances, be diminished by one degree.

"The same rule will be applied to the native of the kingdom who commits on foreign territory a crime against another native of the kingdom, provided the injured party commences an action against him.

"The same rule will also apply if the crime be committed on foreign territory against a foreigner, provided that in the country to which the foreigner belongs the same treatment is extended to inhabitants of the kingdom.

ART. 7th. "The foreigner who on foreign territory commits a crime against the security of the state, or forges the seal, the moneys, bank-notes, obligations of the state, or documents of public credit equivalent to money, and who is arrested within the realm, or is given up by foreign governments, is to be judged and punished according to the provisions of the present law.

ART. 8th. "The foreigner who commits on foreign territory, either against a native of the realm or against another foreigner, any of the crimes indicated in articles 596-600 exclusively, if arrested in the realm or given up by other governments, is to be judged and punished according to article 6, provided the crime shall have been committed within half a miriametre of the frontiers of the realm, or, in case the crime has been committed at a greater distance from the frontiers, when the culprit brings into the realms moneys or effects which he has stolen.

ART. 9. "Besides the cases mentioned in the preceding article, the foreigner who on foreign territory commits a crime against a native of the realm and then enters the royal states is to be arrested, and the authorization of the king's government having first been obtained, an offer of his surrender is to be made to the government within whose jurisdiction the crime has been committed, in order that he may be tried there. But if that government should fail to receive the culprit, he is to be judged and punished in the royal states according to article 6.

"The same rule applies to crimes committed by a foreigner against an inhabitant of the realm in a foreign country, when under similar circumstances an inhabitant of the realm would be punished in the country to which the foreigner belongs, except in case of civil actions."

ART. 10. "Articles 6, 8, and 9 are not to be applied when the culprit shall have been tried and sentenced in the country where the crime has been committed, and in case of his having been condemned, shall have there gone through the term of punishment.

ART. 11. "No culprit can be surrendered to any state without the order of the king's government."

In the Tuscan provinces, where, as has been already said, there still exists the penal code promulgated by the Grand Ducal government in 1853, the regulations respecting foreigners are as follows:

ART. 3. "1. Whoever commits a crime on Tuscan territory, whether he be a Tuscan subject or not, is punishable according to the provisions of the present law."

2. "However, soldiers in the service of the state do not come under the above head, insomuch as crimes committed by them are punishable according to the military laws."

ART. 4. "A Tuscan subject is punishable according to the present law also for crimes committed out of the Tuscan territory—

"(a.) Against another Tuscan;

"(b.) Against the internal or external security of the state;

"(c.) Forgery of moneys or documents of public credit having legal or commercial circulation in Tuscany;

"(d.) Forgery of the seal of a public authority or of a public office of the Grand Duchy, or of the instruments used in making it.

"The same rule applies to crimes committed by Tuscans out of Tuscany against a foreigner; but in such cases—

"(a.) For the punishment of death is substituted imprisonment ('*ergastolo*');

"(b.) For imprisonment ('ergastolo') is substituted the penitentiary ('Casa di Forga') for twenty years;

"(c.) The penitentiary can be reduced within the legal limits; and

"(d.) If the crime is punishable with less than the penitentiary, not only may the punishment be diminished, as laid down under letter c, but moreover the person injured must bring the action against the culprit."

ART. 5. "When arrested in Tuscany, or given up by other governments, a foreigner is liable to punishment under the present law, when beyond the limits of the Tuscan territory he has been guilty of a crime—

"(a.) Against the internal security of the state;

"(b.) Forgery of moneys or of public papers of credit in Tuscany; or

"(c.) Forgery of seals of a public authority, or of a public office of the Grand Duchy, or of the instruments for making them."

"The same rule applies to crimes committed by foreigners out of Tuscany against a Tuscan; but in such cases are applied the limitations laid down in sec. 2 of the preceding article."

ART. 6. "In the cases foreseen in sec. 2 of art. 4, and sec. 2 of art. 5, acts are not to be punishable which, although punishable in Tuscany, are not liable to punishment in the country where they are committed."

ART. 7. "If the Tuscan subject, as mentioned in art. 4, or the foreigner as mentioned in art. 5, has, beyond the Tuscan frontiers, suffered the punishment inflicted by law on his crime, no criminal proceedings can be taken against him in the Grand Duchy.

"But if, condemned out of Tuscany, he has not gone through his punishment, or has only done so in part, he is liable to be tried again in Tuscany, but at his trial the amount of punishment he may already have gone through will be taken into consideration.

ART. 8. "The rules laid down in articles 4 and 5 are to be observed in every case where there are no others laid down by special public conventions between Tuscany and other states."

ART. 9. "No Tuscan subject can be given up to another state for any crime whatever, whether committed in Tuscany or elsewhere."

As regards criminal proceedings, the following are the provisions of the various articles of the code applicable to foreigners:

ART. 34. "For crimes and offenses punishable according to articles 5, 6, 7, 8, and 9 of the Criminal Code in the kingdom, the place of domicile or of arrest, or of surrender of the accused, determines the competency of the court, and a preventive arrest may be made." ("E si fa luogo a la prevenzione.")

"However, the court of appeal may, on the demand of the public ministry or of the other parties, send the affair before the court or tribunal nearest to the place where the crime or offense has been committed.

ART. 35. "The court or tribunal competent to take cognizance of the crimes mentioned in the preceding article may make use of acts made abroad.

"These acts may, moreover, serve to determine the indemnity due to the injured party in the case of crimes committed abroad which are not punishable in the kingdom." (C. S. 33.)

ART. 36. "Whenever a judge receives notice of an action or a denunciation about a crime committed abroad, which can be adjudicated on in the kingdom, he must give notice of it to the 'procureur du roi,' who will call upon the 'procureur général' under whom he is placed." (C. S. 34.)

ART. 853. "When in criminal proceedings it is necessary to proceed to the examination of witnesses or to the drawing up of deeds with foreign judicial authorities, or to demand the arrest and extradition of a criminal who may be in a foreign country, the person drawing up the accusation must inform the court ('sezione d'accusa') to which he belongs, and the court, where necessary, will make the demand in the customary form, and will forward it through the public ministry, with the necessary documents, to the ministry of grace and justice, in order that it may insure the carrying out thereof.

"The extradition of an accused person may also be demanded directly by the government of the King."

"When the extradition of an accused person can be obtained from a foreign government, only on sworn testimony, the judge who hears the case may examine on oath the witnesses whose depositions are required; of these depositions a separate volume is to be made, which will serve for the demand of extradition. At the trial, however, these witnesses must again be sworn in the manner laid down by the law." (C. S., 832.)

ART. 854. "When in criminal matters it is necessary to draw up acts of accusation at the request of foreign judicial authorities, it shall be done by the court of appeal in the 'sezione d'accusa,' and the judge appointed by it.

"In such case witnesses may, if required, be examined on oath." (C. S., 833.)

ART. 855. "No alteration is made in the rules in force for communications between the authorities of the kingdom and those of foreign governments on matters concern-

ing criminal jurisprudence, and the special conventions now in force are to be observed." (C. S., 834.)

"In the cases in which, according to the provisions of the criminal code, the tribunals of the state are competent to take cognizance of crimes committed by subjects in foreign countries, when they return home, the act of accusation and the documents necessary to prove and maintain the guilt of the accused may be drawn up; but he cannot be summoned or arrested until he returns into the country."

In the international treaties there are special dispositions respecting the enjoyment of civil rights accorded to the subjects of each contracting state separately; but, if exception is made of the stipulations exempting foreigners from any forced loans which may be raised in the kingdom, it may be said that they have been placed there more to satisfy the contracting powers than because they were necessary, for the provisions of law, as above explained, are framed on the most liberal principles of international law.

Such are, both in matters of private and of criminal law, the rules affecting foreigners in Italy.

AVO. CORSI.

FLORENCE, *December 10, 1868.*

NETHERLANDS.

THE HAGUE, *July 10, 1868.*

MY LORD: On receipt of your lordship's dispatch of June 16, I lost no time in soliciting of this government full information respecting the disabilities, civil and political, under which aliens resident in the Netherlands labor.

M. Roert Van Limburg in his reply, copy of which I have now the honor to inclose, makes frequent reference to the "code civil" and to the "code de procedure civil" in force in this kingdom. Of these works no translations from the Dutch exist, a want that, however, is the less felt as the whole body of statute law of this country is based on the "Code Napoléon," promulgated in 1810.

Of the recent Dutch legislation on this subject, to which M. Roert Van Limburg calls attention, I have appended translations of those laws and articles the bearing of which, upon the condition of an alien in Holland, is not sufficiently explained in the text of his excellency's dispatch.

In the event of the members of the "naturalization commission" requiring further information on the subject, I would venture to refer them to M. de St. Joseph's "Concordances entre les Codes Civils Étrangers et le Code Napoléon," a work published at Paris in 1856, and furnished with an excellent index, showing at a glance the divergencies of legislation in different countries on any given point.

I have, &c.,

E. A. J. HARRIS.

The Lord STANLEY, *M. P.*

LA HAYE, *le 7 juillet 1868.*

MONSIEUR MINISTRE: En réponse à votre office de 20 juin dernier, par lequel vous avez exprimé le désir d'être renseigné au sujet des incapacités (disabilities) dont la loi frappe les étrangers résidant dans les Pays-Bas, j'ai l'honneur de porter à votre connaissance que ces incapacités sont de deux espèces, et concernent, les unes l'exercice des droits politiques, les autres la jouissance des droits civils.

Quant aux droits politiques, les étrangers n'en ont pas la jouissance. Ils ne peuvent être nommés à des fonctions publiques qu'exceptionnellement conformément aux dispositions de la loi du 4 juin 1858. Ils peuvent même lorsqu'ils résident dans le royaume, sans avoir été assimilés aux Néerlandais en vertu de l'article 8 du code civil, être extradés (voyez l'art. 19 de la loi du 13 août 1849). Enfin la loi du 14 mars 1819 établit une distinction entre les Néerlandais et les étrangers par rapport à la délivrance des lettres de mer. Toutefois l'étranger qui a habité le pays pendant un an, est, aux termes de l'art. III. 2º, assimilé à cet égard aux Néerlandais.

En ce qui concerne l'exercice des droits civils, les étrangers sont, au contraire, assimilés en général aux nationaux. L'art. 9 de la loi, contenant des dispositions générales de législation, déclare le droit civil du royaume applicable aux étrangers comme aux Néerlandais, pour autant que la loi n'établit pas expressément le contraire. Cette restriction s'appliquant aux étrangers en général rend toutefois nécessaire de distinguer entre les exceptions qui s'appliquent à *tous* les étrangers, par conséquent aussi à ceux résidant dans le royaume, et celles qui ne sont applicables qu'aux étrangers ne résidant pas, ou n'ayant pas de domicile connu dans les Pays-Bas.

À la première catégorie de ces exceptions appartiennent celles d'après lesquelles un

étranger n'est admis à succéder soit par le testament soit ab intestat, ni à acquérir par voie de donation que pour autant que les mêmes avantages sont assurés aux Néerlandais par la législation du pays de cet étranger (articles 884, 957, du code civil), et en outre celles résultant de l'art. 152 du code de procédure civile, d'après lequel tous étrangers, demandeurs principaux ou intervenants, sont tenue, si le défendeur le requiert, avant toute exception, de fournir caution de payer les frais et dommages-intérêts auxquels ils pourraient être condamnés, et de l'art. 155 du même code, lequel exclut du bénéfice du prodéo les étrangers indigents, à moins qu'une convention spéciale ne leur assure ce bénéfice.

Les exceptions de la seconde catégorie résultent des art. 127 (relatif aux citations,) 585 10° (relatif à la contrainte par corps) 710 1° (qui exclut les étrangers du bénéfice de la cession de biens), et 768 à 770 (relatifs à l'emprisonnement pour dettes et à la saisie des biens), du code de procédure civile. Aucune de ces dernières exceptions ne s'applique toutefois aux étrangers assimilés aux Néerlandais conformément à l'art. 8 du code civil, à l'égard desquels la règle posée par l'art. 9 précité de la loi contenant des dispositions générales de législation est en tous points applicable en ce qui concerne l'exercice des droits civils.

Espérant, monsieur le ministre, que les renseignements qui précèdent pourront suffire au but qu'à en vue votre gouvernement, je saisis cette occasion pour vous renouveler l'assurance de ma haute considération.

ROEST VAN LIMBURG.

Vice-Admiral HARRIS, &c., &c., &c.

[Translation.]

Law of June 4, 1858.

We, William III, &c., having considered article 6 of the constitution, and consulted our council of state, and deeming it desirable to determine the eligibility of aliens to government employ, whether civil or military, have decreed as follows:

ARTICLE 1.

Aliens are eligible for government employ as—

- a. Consul-general, consul, or consular agent.
- b. Chancellor or servant in missions, consulates-general, and consulates.
- c. Chief, subordinate, teacher, or official in the government establishments for education, arts, and sciences.
- d. Official in the telegraph department.
- e. Official connected with steam-machinery.
- f. Employé in mines.
- g. Director and commissary of government entrepôts.
- h. Controller and inspector of small-arms.
- i. Die-sinker at the mint and government offices.
- k. Engraver for any government department.

ARTICLE 2.

Aliens who have served or are serving in the army or the navy, may, if furnished with an honorable discharge, after twelve years' actual service, be appointed clerk, skipper, or gauger, in the revenue department; watcher, porter, or boom-closer in fortresses; toll-keeper, sluice-keeper, employé in military hospitals; and in the clothing, camp, equipment, commissariat, or military baking departments.

ARTICLE 3.

Aliens in civil government employ at the time of the coming into operation of this law are likewise eligible for appointment to any office mentioned in article 2.

ARTICLE 4.

Aliens appointed previous to this law's taking effect to any office or employ other than those mentioned in article 1, may retain such office or employ, but may not receive advancement in the public service unless naturalized according to law.

Given at the Loo, June 4, 1858.

(Signed)

(Countersigned)

WILLIAM.

J. K. VAN GOLDSTEIN.

[Translation.]

Article 19 of the law of August 13, 1849.

The enactments of this law are not applicable to aliens who, under article 8 of the "Code Civil," are assimilated to Netherlands subjects; and, with reference to this law, those aliens are considered admitted to Netherlands citizenship who are domiciled within the kingdom and married to Netherlands women, or who, having been married to Netherlands women, have by them had issue born within the Netherlands.

[Translation.]

Extracts from code of civil procedure.

No. 127. An alien may, even when not domiciled in the Netherlands, be cited before a Netherlands tribunal for crimes committed by him against a Netherlands subject either within or without the limits of the kingdom.

No. 585.—10th. Aliens not domiciled within the Netherlands are liable to imprisonment for debt for any debt contracted with a Netherlands subject.

No. 710.—1st. Aliens not domiciled within the Netherlands are excluded from participating in the advantages of cession of property.

No. 768. Aliens not domiciled within the Netherlands may, without sentence in a court of justice, be seized for debts due to a Netherlands subject on an order of the justices of the arrondissement.

No. 769. Bail (on good securities for both debt and costs) may be accepted.

No. 770. Aliens, non-domiciled, are liable to seizure for debt, if payment of a debt on application is not made in eight days.

[Translation.]

Article 8 of the civil code.

Aliens are assimilated to Netherlands subjects in the two following cases:

1st. When, in virtue of permission from the King, they have established their domicile in the kingdom, and made the communal administration acquainted with such permission.

2d. When, after having established their domicile in a commune of the kingdom, and retained it in the same commune for six years, they shall have announced to the communal administration their intention to establish themselves in the kingdom.

PORTUGAL.

LISBON, August 22, 1868.

MY LORD: In reply to your lordship's dispatch of the 16th of June, I have the honor to inclose copy and translation of a note dated the 8th instant, and of its inclosure, addressed to me by the minister of foreign affairs, in answer to my application to him for information as to the disabilities of aliens in this country.

In the inclosure above referred to, your lordship will find a statement of the rights, as well as of the disabilities, of aliens in Portugal.

I have, &c.,

CH. A. MURRAY.

The Right Honorable Lord STANLEY,
 &c., &c., &c.

FOREIGN DEPARTMENT, LISBON, August 8, 1868.

MOST ILLUSTRIOUS AND EXCELLENT SIR: In addition to the note which my predecessor addressed to your excellency on the 16th of July last, I have the honor to forward to your excellency the inclosed copy of the report made by the councillor and assistant attorney-general to the Crown attached to the department of the interior, wherein the rights and powers to which foreigners are entitled in Portugal are summarily stated.

Having thus complied with the wish expressed by your excellency in your note dated the 24th of June last,

I am, &c.,

CARLOS BENTO DA SILVA.

(Copy.)

Rights and powers enjoyed by foreigners in Portugal.

1. All foreigners residing or traveling in Portugal possess the same rights and are subject to the same civil duties as Portuguese citizens, as far as regards any acts which are to be carried into effect in this country, except in such cases in which either an express law or a special treaty shall provide otherwise. (Civil Code, art. 26.)

2. The status and civil capacity of foreigners are to be regulated according to the law of their own country. (Article 27.)

3. If met with in these realms they can be sued before the Portuguese justices on account of any engagements entered into with Portuguese in a foreign country, the case of any special treaty excepted. (Arts. 28 and 30.)

4. They can be sued by other foreigners before the Portuguese justices for any engagements entered into in this country, if met with there, the aforesaid case excepted. (Arts. 29 and 30.)

5. Any judgments given in foreign courts of justice upon any civil rights between foreigners and Portuguese can be carried into execution before the Portuguese tribunals, (art. 31,) provided they are examined and confirmed in any of the tribunals of second instance of the kingdom, after hearing the parties, and in the presence of the representative of the Crown, unless there should be a treaty stipulation providing otherwise, or whenever the parties expressly consent to the execution of such judgments by a written agreement signed by them before the proper judge, namely, that of the domicile of the person against whom judgment is to be carried out, and in his absence that of the place where the property is situated. ("Reforma Judiciaria," Judicial Reform, art. 567, and respective paragraph.)

6. Foreigners can become naturalized, if they are of age, both by the law of their country and by Portuguese law, provided they are able to maintain themselves either by the work of their hands or by any other means of subsistence, and shall have resided during one year in Portuguese territory, unless they should be the descendants of Portuguese blood, and should have come for the purpose of establishing their domicile in this kingdom; because, in such a case, one year's residence is not requisite, which may also be dispensed with by the government in the case of a foreigner married to a Portuguese woman, or in the case of any one who shall have performed, or may be called to perform, any important service to the nation. (Civil Code, arts. 19 and 20.)

7. Letters of naturalization are granted by the executive power, (Constitutional Charter, art. 75, § 10,) but are only valid after being registered in the municipal chamber of the district where a foreigner shall have established his domicile. (Civil Code, art. 21.)

8. All foreigners who are naturalized are Portuguese citizens, (Constitutional Charter, art. 7, § 4,) enjoying as such all the political rights appertaining to them, such as voting at elections, &c., (art. 63 of the Constitutional Charter.) They cannot, however, be elected deputies, (art. 68, § 2,) nor succeed to the Crown, (art. 89,) nor be minister of state, (art. 106,) nor a councillor of state, (art. 108.)

Lisbon, July 29, 1868.

CONTO MONTERO.

True copy:

OLIMPIO JOAQUIM OLIVEIRA.

True copy; Department of state of foreign affairs, 8th of August, 1868.

EMILIO ACHILLES MONTEVERDE.

PRUSSIA.

BERLIN, October 17, 1868.

MY LORD: I have the honor to transmit herewith the translation of a note, dated the 7th instant, from Baron Thile, inclosing a report which I was instructed by your lordship, in your dispatch of June 16, to furnish for the use of the naturalization commission on the disabilities to which aliens, residing in Prussia, are subjected by Prussian law.

A translation of this report, by Mr. Harris, Lord Brabazon, and Mr. O'Connor, is likewise inclosed.

I have, &c.,

AUGUSTUS LOFTUS.

The Lord STANLEY, M. P.,
 &c., &c., &c.

[Translation.]

BERLIN, October 7, 1868.

In compliance with the desire expressed in his excellency Lord A. Loftus's note of June 20, of this year, the undersigned has the honor to transmit herewith a summary of the principles applicable to foreigners as regards their legal status in the Prussian territory.

The undersigned avails himself, &c.

THILE.

[Translation.]

Summary of the principles applicable to aliens as regards their legal status in the Prussian territory.

According to the provisions of the general Prussian body of laws, the laws of this country are applicable to aliens living or carrying on business in Prussia in the same manner as to the Prussians themselves.

§§ 34 and 22 of the introduction to the general common law. Ministers and residents of foreign powers, as well as those employed in their service, are excepted, for whom are reserved the immunities which belong to them by international law, and by the existing conventions with different courts. (Page 36, as above cited.)

The provisions relative to the application of this principle in criminal or civil suits will be hereafter stated.

The exceptional position of the "personnel" of a legation has reference only to their exemption from the jurisdiction of the native penal and civil tribunals, and to the obligations which the laws of the country impose on aliens, not, however to the rights which aliens can generally acquire within this country. In this respect the "personnel" of the legation is in similar position to other aliens.

Aliens enjoy all the privileges of Prussian subjects in the carrying on of business duly authorized.

§ 41 of the introduction to the general body of law.

Whenever the respective foreign state has not, to the disadvantage of aliens generally, or to the subjects of this state in particular, imposed burdensome regulations. In this case retortion can occur, from which aliens cannot escape by the abandonment of their rights to natives.

§§ 43 and 44 of the introduction to the general body of law.

The right to retortion becomes especially applicable whenever, in the bankruptcy in the state to which the foreigner creditor belongs, similar privileges to those enjoyed by its own subjects are not accorded to subjects of that state. (S. 3, statute respecting bankruptcy of May 8, 1855.)

A. Whenever aliens and natives have put an attachment on the estate of their debtors, and that attachment gives in the country of the aliens an advantage to the latter.

S. 87, Part I. Title 29 of the general statute respecting tribunals.

The right of retortion must not be put into operation by the courts of the first instance without the sanction of the legally-appointed authorities.

S. 44 of the introduction of the general body of law.

I. The entry of aliens into the Prussian dominions; their residence therein or their departure therefrom is not restricted by any burdensome formalities.

§ 2 B. of the law respecting passports for the North German Confederation.

They are authorized to take up their abode without being naturalized; (§ 13 of the law respecting the acquisition and loss of the quality of a Prussian subject of the 31st of December, 1842, Law Collection of 1843, page 15;) but in this case they can be required to state the period during which they may continue in their previous relations as subjects.

§ 14. Above cited.

II. Aliens are limited in the exercise of political rights.

A. They cannot take part in the representation of the country.

§ 7 of the regulations for the formation of the 1st chamber (House of Lords) of the 12th of October, 1854, (Collection of Laws, 541,) and § 8 of the regulations respecting the selection of deputies of the 2d chamber (house of deputies) of the 30th May, 1849. (Collection of Laws, 205.)

B. With respect to the political municipal privileges, the principle prevails according to the municipal laws prevalent in different parts of the country, that—

a. In towns the acquisition of citizenship, *i. e.*, the right of participation in municipal elections, as well as of the qualifications for undertaking unpaid posts in the municipal representation, is dependent upon the qualification as a Prussian; on the other hand, aliens can, on the same presumption as natives, *i. e.* by the acquisition, for instance, of a local domicile, become municipal members without the right of citizen-

ship, and thereupon take equal part in all the affairs and duties of the municipal members, with exception of the before-mentioned rights consequent on citizenship.

In the towns of the Duchy of Holstein (Holstein municipal regulations of the 11th of February, 1854) aliens, on the same condition as natives, (independence, respectability, and settlement in the town,) are capable of acquiring the right of citizenship, provided the permission of their residence is not forbidden for police reasons, and that they have complied with the special existing regulations respecting the establishment of aliens. These regulations tend to the effect that aliens arriving in the country should not merely apparently and temporarily, but really settle down in the place. He (the alien) must not retain his own residence in another place, and must, when married, establish his household in the place, together with his wife and children, so that he (as the royal statute of the 23d September, 1796, says) can "be looked upon as our own subject."

Aliens who are unmarried and without a household establishment must, as a security that they intend to remain in the place, and before receiving the right of citizenship, deposit 200 thalers as bail, which will be returned to them only after a lapse of five years, provided they have during the interim resided in the place and followed a civil calling; otherwise it goes to the municipal fund.

Besides this, the special regulations specified by the charter of the 5th of November, 1841, (Chronological Collection of the Schleswig-Holstein Ordinances of 1841, page 243,) with respect to the settlement of aliens, must be complied with.

The right of citizenship qualifies forthwith for every kind of civil employment in the place, also for the municipal elections, the municipal offices and duties (mandate,) and compels the acceptance of the latter.

Residents in a municipality, but without the right of citizenship, are (*schutznerwanth*) under the especial protection of the government.

These enjoy such municipal privileges as are not exclusively attached to the right of citizenship, and are obliged to pay the municipal taxes, (and, by statute, not at a less rate.) Aliens can only become (*schutznerwanth*) under the especial protection of the government when they have complied with the above-mentioned special regulations respecting domicile in a place. In the Holstein country towns the same principles essentially prevail as in the towns and country towns of Schleswig.

b. Also in the country municipalities (*landgemeinde*) the general principle prevails, according to the municipal regulations existing in the different parts of the country, that aliens can only obtain complete municipal rights after they have first obtained the right of citizenship. In the municipality of Hanover, however, owners of property, farms, and dwelling-houses in general, can exercise the right of municipal electors, and so, also, if they are aliens, without being settled there when they have acquired the right to reside in the respective municipality, which again presupposes the acquisition of the rights of a subject.

In the municipalities of the Schleswig-Holstein Duchies, by the decree of the 22d of September of last year, (Law Collection, page 1603,) relative to the right of election, the local regulations existing in each municipality are in the bulk maintained. These local regulations rest mostly on custom.

C. Relative to participation in the provincial and district representation, the qualification of being a Prussian on the part of an owner of landed property is not required.

The royal order in council of the 28th of May, 1809, which is in force in the eight older provinces, with the exception of the Rhine Province, makes the acquisition of nolle property and manor-houses by aliens subject to a special concession from the minister of the interior, which is dependent upon taking an oath of allegiance. By royal order in council, also, of February 15, 1858, it is ordered, in accordance with the decree of March 28, 1809, that the acquisition of a *Rittergut* by an alien must, before a special permission can be accorded, be subject to this condition—that the owner of the property must only exercise the rights appertaining to the same, especially that of attendance at quarter session, by means of a delegate, who is to be chosen from these privileged owners of property (*rittergustbesitzer*) accustomed to the personal exercise of these rights. In the Rhine Provinces the royal order in council of May 31, 1847, only states that aliens who possess land in the Rhine Provinces are not permitted to exercise the rights of privilege attached to the property until they have taken the oath of allegiance. With regard to capability of election, actively and passively, to the circuit, communal, and provincial sessions in towns and parishes, the condition of being a Prussian subject is in general attached, in accordance with II B, of the above-cited regulations, as such capability is made subject to the possession of right of citizenship or membership of the parish.

In the regulations issued in the year 1867 for the newly acquired provinces respecting the circuit and provincial constitutions, there exist no express provisions touching the necessity of being a Prussian subject in order to exercise the rights of landownership in regard to electing and being elected.

As far as our laws are silent upon this subject, aliens may be looked upon as authorized to exercise these rights. Without doubt those who are in a similar position to

natives, in respect to being large landed proprietors, are not compelled to obtain a special concession or to take the oath of allegiance.

D. Aliens, having powers of policial supervision, are not permitted to exercise their authority in person, but must appoint a native delegate to superintend the police of the place—(§ 7 of the law respecting the rural local magistracy in the six old East Provinces, of April 14, 1856; Collection of Laws, 354.) The appointment to situations under the state and also to the post of consul.

§ 6. Statute of December 31, 1842. Legal Code for 1843, p. 15. Royal order of Oct. 17, 1847, p. 375. Royal order of Jan. 27, 1862, p. 95.

§ 7 of the law on the organization of the consulates of the Confederation of November 8, 1867.

Federal laws, page 1418.

The right to act as jurymen in criminal suits.

§ 62, decree of January 3, 1849, Legal Code, 14.

Art. 56, law of December 3, 1852, p. 209.

The right to act as arbitrators in civil suits is not attached to domicile, (*indigenat*), but is nevertheless not allowed to persons living abroad.

§ 41. Introduction to general statutes respecting tribunal.

III. Aliens, with the exception of the corps diplomatique, are subject in like manner as natives to the indirect taxes, as also to the land tax payable on land and houses appertaining to them in this country.

They are liable to the class and income taxes, subject to the modifications mentioned above in § 6 and 18 of the law of May 1, 1851. Legal Code, 193.

In regard to their legal rights in private affairs, aliens are permitted in Prussia to acquire both personal and real property, as also to carry on business of all kinds. As participators in an inheritance within this country they possess equal rights with natives. No deduction shall be made from inheritances falling to aliens, unless the government of the alien raises a like tax on inheritances accruing to aliens.

Royal order of April 11, 1822. Legal Code, page 181.

With reference to the acquisition of property by aliens, the three following limitations are in force:

I. Donations, inheritances, and legacies cannot be left to foreign corporations and public institutions without royal permission.

5. 11. Law relating to donations and bequests to institutions and companies, of May 13. Collection of Laws, page 49.

2. Foreign corporations and other authorized persons, especially joint-stock companies, are not permitted to acquire real property within the Prussian state without royal permission.

Law of May 4, 1846. Collection of Laws, page 235.

3. Estates and manor-houses belonging to the nobility cannot be acquired by foreigners without the permission of the minister of the interior. Royal decree of March 28, 1809, page 7.

With regard to real property situated in Prussia, it is subject to the laws of the jurisdiction in which it may be placed, without regard to the person of the proprietor.

§ 32. Introduction to general body of law.

Every negotiation thereon must consequently be carried out in the form required by the laws of this country.

§ 115, I 5. Body of law.

The personal qualifications and rights of foreigners (*jura status*) are generally judged in accordance with the laws of their country.

§ 23. Introduction to body of law.

If, however, that law should, as regards competency to enter into relations under the cognizance of the law, differ from the Prussian law, then the competency of the contracting parties with respect to such relations entered into in these countries, and with respect to the concluding of contracts, shall be determined by the law with which the subject shall the best comport.

§ 26, 35. Introduction to body of law.

Especial regulations apply to the following cases:

1. Foreigners who are desirous of contracting a marriage in Prussia, either with a native or a foreigner, must, in addition to fulfilling the other legal requirements, prove by a certificate, properly attested by the local authorities of their home, that they are permitted by the laws of their country, without hindrance to their state allegiance, to contract a marriage abroad, or that they have received, in accordance with these laws, the necessary permission for the contracting of the proposed marriage.

The ministers of justice, religion, and the interior are, nevertheless, empowered, as well in particular instances as with regard to the legislation of particular states, to permit to their subjects generally the production of such a certificate.

§ 1 and 2. Law of March 13, 1854.

Collection of Laws, p. 123.

2. The carrying on of business is usually permitted to aliens as well as to natives, but—

a. The right of owners of mercantile ships to hoist the flag of the North German Confederation is confined to those foreigners who are naturalized.

§ 1. Law of October 28, 1867.

Confederation Laws, p. 35.

General order of March 25, 1868, relative to keeping the ship's log. Judicial Ministerial Paper, p. 95.

b. Aliens must obtain permission of the minister in order to carry on through agents in Prussia insurances and emigration undertakings.

§ 2. Law of May 14, 1853.

Collection of Laws, p. 293.

§ 7. Law of May 7, 1853.

Collection of Laws, p. 430.

C. Foreign agents, in default of an international treaty, can only carry on a permanent trade with the permission of the minister of commerce; likewise—

D. In accordance with § 12 of the law of hawking, of April 28, 1824, the alien is in general only allowed to carry on the trade of the peddler under greater restrictions than the native.

3. Foreigners can only be appointed guardians to native wards with the consent of the minister of justice, when in all matters relating to the trusteeship, with the permission of their own foreign law, they have submitted to the authority of the courts exercising jurisdiction over guardians and wards.

§ 156, 157. Part II. 18 Common Law.

V. With reference to the administration of the civil and criminal code, the jurisdictional stipulations concluded with separate states come next into operation.

Apart from such stipulations the following principles are in force:

A. In criminal cases.

a. Foreigners are subject to the Prussian criminal code, if they commit in Prussia a crime, misdemeanor, or excess; or abroad, an action which in the Prussian code would come under the heads of high treason or false coinage.

§ 3 and 4. Criminal Code of April 14, 1851.

b. There is this particular difference between the punishment of a native and a foreigner, that in those cases in which a native would be sentenced to police supervision, a foreigner would be banished from the country, (§ 29 in book above cited,) and the return of an alien thus banished is punishable with three months to two years' imprisonment.

§ 115, as above cited.

c. Aliens who fail to pay the fine affixed to smuggling are at once arrested, if they are found in the country, and the punishment of imprisonment fixed by law is carried into effect if they do not once pay or find security, whilst the alternative punishment of imprisonment is only enforced against a native when the amount of the fine has not been procured by means of an execution on the property of the defrauder.

§ 54, 55. Law of January 23, 1838.

Collection of Laws, p. 89.

§ 24, 25. Law of July 29, 1867.

Collection of Laws, p. 1275.

d. With regard to procedure, the same regulations apply to aliens and natives; but in cases in which a private suit is instituted for examination and punishment, alien private suiters must pay higher fees than natives, if in their native state foreigners and natives are not placed on the same footing.

§ 492 of the law of June 25, 1867, touching the laws relating to penal punishment and procedure in those portions of the country annexed in the year 1866.

In time of war aliens are subject to the jurisdiction of courts-martial in two cases:

aa. Foreign officers attached in time of war to the Prussian army, and their suite; and—

bb. All aliens who, by traitorous conduct at the seat of war, bring danger or hurt to the Prussian troops; but in this latter case this extraordinary tribunal only comes into operation when the King, or the general in his name, gives the order for the assembly, and makes it publicly known.

§ 18. Nos. 2 and 4 of the martial law of April 3, 1845. Collection of Laws, 333.

E. In accordance with the principles of extra territoriality, the ambassadors accredited to this court, the chargé d'affaires, their wives, and persons belonging to the missions accredited to this court, and their servants, are free from all examination and arrest, except sentence is passed on them by the highest state authority. Courts of justice and police authorities are bound to take every precautionary measure to hinder the accomplishment by any of these persons of a meditated crime.

§ 251, 253, 258. Criminal Code of December 4, 1805.

B. In civil suits.

1. Aliens have the same powers as natives asserting their private claims as plaintiffs before the courts of justice.

There are two exceptions to this principle within the jurisdictional limits of the general statute respecting tribunals.

a. According to the regulations of the general statute respecting tribunals, natives as well as aliens are bound to give security to the defendants in cases where the matter cannot be at once settled. But the defendant can only refuse in a suit with a foreigner to go into court, or to allow the suit to continue, if the plaintiff cannot find security.

§ 13, I 21.

b. Aliens can only obtain the arrest of another alien.

aa. When the summons has reference to a contract concluded or to be carried out in this country.

bb. When the debtor in the deed by virtue of which the arrest is sought has made himself liable either to payment or arrest in any place.

cc. When the summons originates in a bill of exchange which has fallen due, and the drawer is a merchant who visits the fairs and markets of this country.

§ 88, I 29. General statute respecting tribunals.

1. According to the regulations of the Hanoverian law in force in the province of Hanover, only aliens are bound as plaintiffs to provide security for the payment of legal costs, in accordance with § 54, 55 of the Hanoverian statute of November 8, 1850. (Hanoverian Code of Laws, page 341.)

2. With reference to the obligations of aliens to appear as defendants before the courts of this country, a difference of procedure prevails in the provinces where the civil code or general statute respecting tribunals or where the common law is in force.

a. Within the judicial limits of the civil code, according to art. 14, every alien, even if he does not live in the country, can be cited before the courts of the country on account of obligations entered into with a native either in this country or abroad.

b. There is, however, a difference in the working of the general statute respecting tribunals which depends upon this, whether personal or real law be put in force against the alien.

1. A personal forum (the forum domicilii) belongs to foreigners in Prussia whenever they have settled there, or are staying in Prussia with that intention. After the cessation of (eximirten) legal status they can be cited on personal matters before the tribunals of the districts in which they have settled, or have declared their intention of settling.

Section 26, 27, I 2. General statute respecting tribunals. Section 1 and 23, decree of January 2, 1849.

2. Foreigners traveling through Prussia have here generally no personal forum; accordingly they can only be cited before the tribunals of this country in those cases in which a native could be cited before another tribunal as constituting his personal forum.

This is the case:

a. Whenever plaint is made respecting the completion or cessation of a contract which was concluded in this country, or should be here carried out, the plaint can be instituted just as well before the tribunals of the country of the concluded contract as of the place for its carrying out; but that forum is only established whenever the defendant allows himself to be met with there, *i. e.*, whenever the plaint can be served upon him within the jurisdiction of any such tribunals.

Sec. 14851, I 2. General statute respecting tribunals.

The last restriction does not apply in plaints respecting bills of exchange. These can be instituted at the place of maturity against any persons responsible for bills.

Sec. 6. Law of February 15, 1850.

Collection of laws, page 53.

b. Claims arising out of an administration can be presented before the tribunal at which any one shall have administered a foreign real or personal estate, until the administrator has wound up the administration.

Sec. 154, 155, I 2. General statute respecting tribunals.

c. If any one has had an attachment served for damages, he must free himself before the judge of the place where the attachment arises, and, if he be a foreigner, must on that account give security.

§ 120, I 2. General statute tribunals.

§ 546, I 14. General body of laws.

This regulation has been recently extended to the case of foreigners injuring natives in this country.

§ 8. Supplement to general statute tribunals.

d. In the case of attachment.

The order of attachment rendered necessary as security of the plaintiff's claim is admissible before every tribunal within whose jurisdiction the defendant lives or where goods of his are to be found. The hearing of the chief claim belongs to the judge of the personal forum of the defendant whenever he has a personal forum in his native

country. With respect to foreigners, the forum determines the attachment as well as the hearing of the chief claim.

§ 79, I 2, § 76, 88-90, I 29. General statute tribunals.

§ 201, 212. Supplement to general statute tribunals.

E. In the case of voluntary (declared or tacit) prolongation.

§ 160-165, I 2.

In the case of obligatory prolongation this takes place—

aa. When aliens cite a native within his jurisdiction in this country, then they can be sued in the same forum (*forum reconventionis*) by the accused on account of all counter-claims, and also when it arises from a claim in a real action relative to a movable or immovable property, whereas natives can in this case be sued only in the real forum.

§ 16, 17, and following, I 19.

bb. In the case of actions for defamation.

When aliens pretend to a claim against a native, they can be accused by the latter upon the hearing of their pretended right, which subjects him to the prejudice of a judgment against the pretension before the court to which the hearing of the case would belong.

§ 4, I 32. General statute tribunals.

G. A divorce suit against an alien can in this country only be instituted when an alien who has no house elsewhere, or who conceals such house, has during his residence in this country married a native woman without acquainting her that he did not intend to remain in this country.

§ 129, I 2. General statute respecting tribunals.

§ 33. Supplement to general statute respecting tribunals.

B. The real forum is open against natives or aliens possessing movable or immovable property for all causes of action having a real right for their basis.

§ 107, 116, I 2. General statute tribunals.

a. In the provinces where the (*Landfässinit?*) is in force, the bringing forward of personal claims *in foro rei sitæ* against an alien proprietor is permissible. Apart from this, even personal claims which arise out of the possession of landed property, or out of transactions which in his quality as landed proprietor he had undertaken, can be instituted against the possessors of immovable property *in foro rei sitæ*.

§ 112, I 2. General statute respecting tribunals.

Under that head the following cases are included: when a landed proprietor refuses—

a. To fulfill his obligations contracted with his farmer or agent, or

b. To allow compensation for loans and materials employed for the improvement of the estate; or when a proprietor

c. Disturbs his neighbor in possession.

d. Or sets up a false claim to the actual rights of the adjoining property, or when he in part or wholly alienates landed property, and does not fulfill his contract, or does not give the due quiet possession.

§ 131, as above cited.

B. These legal regulations are extended in favor of Prussian subjects, so that they can raise claims against any alien living in the country and possessing movable or immovable property, before the tribunal under whose jurisdiction the property is situated, on account of personal claims, with the object of obtaining payment out of the property he owns in the country.

§ 34. Supplement to general statute respecting tribunals.

4. In the courts having cognizance of inheritance there can be instituted against foreign co-heirs—

a. Claims of legatees and of creditors of the testator's estate.

§ 121-4, I 2.

b. Claims on account of inheritance so long as there remains a portion of the inheritance.

§ 125, as above cited.

5. On requisition of the Prussian courts, execution decreed by foreign courts of law will be carried into effect when there is no doubt as to their competence, or as to the affair in question.

§ 30, I 2.

Such doubts especially occur whenever the period shall have expired within which, according to the laws of this country, execution by decree can be sought.

§§ 2, 3, I 24.

Or whenever a kind of execution inadmissible by the laws of the land is sought.

6. The §§ 292-6 of the bankruptcy decree of May 8, 1865, contain special regulations for the procedure with respect to native property of a foreign insolvent debtor.

Thus merchants who have a commercial establishment in this country can obtain an insolvency (particular concursus) in respect of property here; and any other insolvent co-debtor is subject, upon petition of the creditors, to the bankruptcy procedure, which allows the appearance of foreign creditors. The balance remaining after the conclusion of the insolvency or the bankruptcy, as the case may be, is delivered to the for-

eight bankruptcy judge after the consent of the minister for foreign affairs and the minister of justice shall have been obtained.

7. Envoys, chargé d'affaires, and residents of foreign powers accredited to this court, and the persons in their service, are exempted from the jurisdiction of the tribunals of this country.

§§ 62, 63, 64, I 2.

If, however, such persons possess real property in this country, they are subject to the regulations under Z. A. But inquiries must be made at the ministry for foreign affairs before the summons is issued, whenever it is not a question of an essentially real action, and whenever the envoy, chargé d'affaires, or his wife, even, is the possessor.

This exemption applies to Prussian subjects who enter the service of the envoy during the period of his service; also to Prussian female subjects who shall marry, after compliance with the requisite conditions, with the foreign envoys, or with persons of the higher rank in their suite. The exemption applies to the wives of servants of an envoy only whenever such persons are also in the service of the envoy, or reside with their husbands together in the envoy's house.

§§ 67, 68, I 2.

C. The above-mentioned regulations, which are in force within the jurisdiction of the "general decree for the administration of justice," come into operation also in those territories in which the Hanoverian "decree respecting actions at law," of November 8, 1850, and the common law obtain. The Hanoverian "decree respecting actions at law," however, recognizes, in accordance with the common law, the *forum contractus*, even when the defendant is, at the time of drawing up of the suit, not within the district of the tribunals.

§ 10, as above cited.

The civil suit respecting forbidden acts belongs unconditionally to that tribunal in the district of which the act occurred.

§ 12, as above cited.

Lastly, the *forum reale* is recognized only on behalf of such real actions respecting possession, boundaries, and partition, as have for their subject immovable property; and, further, on behalf of all actions against the possessors of immovable property considered as such.

Executions arising from judgments passed abroad, and from decisions in arbitration, take place according to the Hanoverian "statute respecting actions at law," (page 533,) with the same exceptions which are valid in the case of native subjects; and, further, that statute lays down in a similar manner to the Prussian statute respecting "bankruptcy," at page 605, that a special bankruptcy can be obtained, and the balance of the estate paid over to the foreign tribunal, in respect of native property of the foreign bankrupt, upon petition of the interested creditors.

RUSSIA.

ST. PETERSBURG, July 1, 1868.

MY LORD: With reference to your lordship's dispatch of the 16th instant, instructing me to furnish information for the use of the naturalization commission, as to disabilities to which aliens residing in Russia are subjected by Russian laws, I have the honor to inclose herewith a statement on the subject which I have received from Mr. Roebuck, the consulting lawyer of Her Majesty's embassy, and I also inclose a translation by Mr. Michell of the law promulgated on the 22d of February, 1864, relative to foreigners residing in Russia who may wish to become Russian subjects, or who, having done so, may wish to resume their original nationality.

I have, &c.,

ANDREW BUCHANAN.

Opinion of Mr. Josiah Roebuck, sworn advocate at St. Petersburg, respecting the disabilities to which aliens residing in Russia are subjected by Russian laws.

Several restrictions and disabilities with regard to the enjoyment of civil and political rights, to which foreigners in Russia were formerly liable, have been abolished since 1860, and the rights and prerogatives of foreigners have since been greatly extended.

Foreigners are thus allowed to trade without taking the oath of allegiance.

They can hold landed property, and as landholders are eligible as members of the rural provincial assemblies, with right of vote.

A foreigner may hold a commission in the Russian army, and take the several ranks

in it, and having the rank of lieutenant-general or full general, or of field-marshal, may be appointed senator and member of the council of the empire.

The disabilities to which foreigners are still subject in Russia are the following :

1. They cannot acquire the right of hereditary nobility.
2. They cannot hold the office of judge, magistrate, justice of the peace, advocate, or usher of a council of law, nor serve on a jury.
3. Foreigners are not allowed to enter the civil service. An exception is, however, made in favor of professional and scientific men, such as physicians, surgeons, apothecaries, architects, engineers, professors, and teachers of the arts and sciences, who may acquire in the service of the state the ranks attached to their respective capacities, and receive decorations which they may acquire, do not confer on them the rights and prerogatives enjoyed by national-born subjects.

N. B.—Aliens of the Jewish persuasion are subject to very serious disabilities.

J. MICHELL.

Law of 10th-22d of February, 1864, relative to foreigners in Russia.

1. A foreigner must be domiciled in the empire before he can be admitted as a Russian subject.
2. A foreigner wishing to become domiciled in Russia must inform the governor of the province in which he wishes to reside of his desire to do so, explaining the nature of his occupation in his own country and the pursuits he proposes to follow in Russia. On the receipt of such declaration the petitioner is considered to be domiciled in Russia, but will nevertheless be accounted a foreigner until he take the oath of allegiance.
3. Foreigners already resident in Russia, distinguished in art, trade, or commerce, or in any other pursuit, may prove their domiciliation by other means than those mentioned in § 2.
4. A foreigner, after being domiciled five years in Russia, may apply to be admitted to Russian allegiance.
5. Foreign married women cannot become Russian subjects without their husbands.
6. The allegiance when sworn to is merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged to be Russians.
7. Specifies rules to be observed in petitioning the minister of the interior to be admitted to Russian allegiance, (documents and declarations required.)
8. It is optional with the minister to grant the above petition or not.
9. An oath to be taken.
10. Mode of taking oaths.
11. In special cases the period requisite to constitute a domicile may be shortened.
12. Children of foreigners not Russian subjects born or educated in Russia, or, if born abroad, yet who have completed their education in a Russian upper and middle school, will be admitted to Russian allegiance, should they desire to do so, a year after they have attained their majority.
13. The children of foreigners wishing to become Russian subjects will be admitted on the same terms as their parents.
14. Foreigners in the Russian military or civil service, or ecclesiastics of foreign persuasion, will be admitted to Russian allegiance without period of domicile.
15. A Russian subject marrying a foreign husband, and therefore considered a foreigner, may, on the death of her husband, or in case of her divorce, return to her former allegiance.
16. The children in the above case are treated as in § 12.
17. Foreign women marrying Russian subjects, and the wives of foreigners who had become Russian subjects, are admitted as Russian subjects without taking oaths of allegiance. Widows and divorced wives retain the nationality of their husbands.
18. Special enactments relative to colonists, foreign agricultural laborers, Bulgarians, &c., remain in full force.
19. Foreigners admitted to Russian nationality are placed in respect to their rights and obligations on a perfect equality with native Russians.
20. Provides for the speedy transaction of business in connection with the adoption of Russian nationality.

II. TRANSITIONAL MEASURES.

1. Foreigners who shall have already adopted Russian nationality may return at any time to their former nationality on payment of all claims against them, (government, private, and other claims.)
2. Those who throw off their Russian allegiance may either quit the country or remain in Russia, enjoying equal rights with other foreigners; they must provide themselves with national passports if in European Russia and belonging to a country in Europe,

within a year; if residing in Siberia or having to obtain such passports from any other quarter of the globe, within two years.

On the lapse of such dates without production of passports, the foreigner must either leave the country or resume his Russian nationality.

3. Exception in cases of desertion, and

4. Annuls all enactment compelling Russian women married to foreigners to sell their immovable property in Russia, with the exception of certain kinds of property which as foreigners they still have no right to possess. With respect to the enactment concerning the payment of three years' dues and export duties by foreigners wishing to leave their Russian nationality, that law is abrogated in respect to those countries which shall adopt a reciprocity in such matters.

III. Abrogating law obliging foreigners to take oaths of allegiance prior to marriage with Russian women and requiring them to ask permission of the emperor to contract marriage with a Russian woman of the orthodox faith.

SAXONY.

No. 39.]

DRESDEN, *September 4, 1868.*

MY LORD: With reference to your lordship's circular dispatch of the 16th June last, directing me to report on the disabilities to which aliens residing in Saxony are subjected by Saxon law, I have the honor to inclose in a copy and translation the information which has been kindly furnished me on the subject by the Saxon government.

I have, &c.,

J. HUME BURNLEY.

The Lord STANLEY, M. P., &c., &c., &c.

[Translation.]

In reply to the note of Her Britannic Majesty's chargé d'affaires, of the 22d June last, relative to the disabilities to which aliens residing in Saxony are subjected, the undersigned has the honor to make the following communication:

The exercise of political rights in Saxony in their immediate relation to the state, as, for instance, the right of voting and being elected for the diet as well as to the municipalities, as, for instance, the right of election of representatives for town and country, implies Saxon citizenship.

For the exercise of certain professions, such as that of a lawyer, a notary public, and medical practitioner, it is likewise necessary to be a Saxon subject.

The regulations of our legislature respecting penalties to which aliens are subject as regards the civil law may be seen from the annexed document, which is a summary of the regulations respecting aliens contained in the civil code, concerning the acquisition and the laws of citizenship in the kingdom of Saxony of the 2d July, 1852, as well as in the penal code.

To obviate mistakes it is to be observed that the twelfth paragraph of the civil code has been left out because it does not bear on the question, as it only prescribes that the mother of an illegitimate child may enforce her rights for the support and education of the child, although the conception may have taken place in a country the laws of which do not recognize such claims.

With respect to civil proceedings at law, aliens are only in the following cases placed on a different footing from the natives:

1. Claims which by mutual agreement are to be settled in the country, or which it would be difficult to prosecute abroad, may, in default of payment, be recovered by the native from the alien who has no landed property in the country, either by arrest, inhibition of passport, or seizure of an adequate portion of the alien's property; provided the claim is to a certain degree established, and provided the alien does not voluntarily enter into recognizances. On the other hand, the arrest of a native supposes a greater risk of losing his claim, and lays him under the stricter obligation of proving it.

(See the order of process of 1622; title ii, § 1.)

2. As a general rule the plaintiff, after having obtained a legal sentence against the defendant for the recovery of his claims, before his claims are actually satisfied, is not liable to an action which the defendant may bring against him in order to get the sentence annulled, nor can the course of law be checked by such a counter-suit.

If, however, the plaintiff who has obtained a legal sentence against the defendant, and is prosecuted by the latter for the recovery of what he has been sentenced to pay him, be an alien, the defendant, not to run any risk of loss, is entitled to demand a temporary deposition of the sum in question, making the alien liable to the action brought against him.

(See the order of process explained of the year 1724; title vi, § 1.)

3. Aliens possessing landed property in this country may, though not resident on it, be prosecuted for the recovery of all personal claims at the place where their property lies.

(See the article for the greater expedition of lawsuits of the 16th June, 1583.

Order of process of the year 1622; title 4, § 3.

Order of process explained of the year 1724; title 4, § 2.)

Whereas natives cannot be cited before the law court of the district in which his property lies, unless other circumstances should declare the competency of such a tribunal;

4. Aliens may, for certain claims, have recourse to the Elbe courts, whereas the competency of such courts respecting the claims of natives depends on certain contingencies.

The mode of proceeding against aliens for such claims has to be simplified and the case to be sooner decided.

(See regulations concerning the competency of the Elbe courts of the 11th September, 1863; Law Gazette and ordinances of the year 1863, p. 722 and following.)

5. Finally, one of the regulations of the law to be noticed is contained in the order of process of the year 1724, according to which regulation the plaintiff is obliged in more important cases to give a security of thirty thalers, with a view of paying the costs arising from the suit.

From this obligation, however, are exempt such as possess landed property in the country, or exercise a trade, or own a mercantile establishment.

It is a question whether any difference should be made between a native and an alien, and whether the same regulation should not also be applied to a Saxon subject who possesses landed property or carries on some mercantile business abroad. In other respects the alien is placed on the same footing as the native respecting civil suits. Regulations such as that contained in the general mining law of the 16th of June of this year, § 16, in virtue of which the alien who owns a mine in this country has to appoint an assignee in the country in order to receive the summons of the respective court of law, have been omitted here, as well as other similar regulations, as they are only intended to facilitate transactions between inland courts and aliens.

The undersigned avails himself, &c.

VON BOSE,
Acting Foreign Minister.

DRESDEN, 17th August, 1868.

Abstract from the civil code.

§ 6. The laws of the country are applicable in the country in as far as public rights, especially public treaties, and the following regulations allow.

§ 7. The enjoyment of rights and liberty of action of a person depends on the laws of the state to which he belongs.

§ 8. The liberty of action of a foreigner is subject to the home laws if his actions render him accountable.

§ 9. The form to be observed in legal transactions is regulated by the laws of the place where the contract is drawn up.

It suffices, however, to observe the laws of the place where the business is to be carried on.

§ 10. The rights to movable and immovable property, as well as the right of possession, depend on the law of the place where such property lies.

§ 11. Aliens are to be judged by the laws of the place where they are to be settled.

§ 13. Marriage and divorce are subject to the laws of the husband's country.

§ 14. Marriage settlements are subject to the laws in force at the husband's domicile at the time of the marriage contract. Such rights are not altered by a change of residence.

Donations between husband and wife are regulated by the laws in force for the time at the place where the husband resides.

§ 15. Paternal authority follows the laws of the country to which the father belongs.

§ 16. Guardianship is subject to the laws of the minor's country.

§ 17. Inheritance is decided by the laws of the place at which the testator last resided. In case of several residences the laws of the last are to be observed.

§ 18. In as far as rights depend upon the option of the parties, they are allowed to avail themselves of other laws than those immediately applicable.

§ 19. Foreign laws are not admissible if they are excluded explicitly or implicitly by the laws of the country.

§ 20. In case the laws of a foreign state make a difference between natives and aliens, this difference is to be taken into account with respect to aliens by the laws of this

country if special regulations are not against it. Such reciprocity cannot be evaded by ceding one's rights to another.

§ 1878. An alien, being a minor, and having immovable property in the country, has to appoint a guardian for it. The foreign guardian of the minor may act as such.

§ 1879. If a foreigner who has a guardian abroad or is under the parental care of a foreigner requires a guardian in the country for some legal purpose or lawsuit, such a guardian may be appointed by the courts of the country.

Abstract from the penal code.

ART. 3.

Foreigners who have committed a crime, and are to be tried by a tribunal of the country, are subject to the penalties of this code, with the exception of the case mentioned in art. 8.

ART. 4.

Trial of a foreigner for a crime committed.

(a.) Foreigners enjoying the rights of extraterritoriality.

ART. 5.

(b.) With respect to other foreigners, those who are guilty of a crime are likewise to be tried only by order of the ministry of justice if the crime has been committed abroad; but even in this case the order is not requisite—

1. If the crime has been committed against a state, its authorities, or subjects, or persons who live under its protection, or were in Saxony at the time of the crime.

2. If the criminal has settled in Saxony.

ART. 8.

Foreign penal laws.

If an offense has been committed abroad by a foreigner, or is, according to articles 4, 5, 6, brought before a tribunal, he is to be judged by the laws of the country where the offense has taken place, provided it be known or can be proved that the culprit would, according to these laws, either not be punished at all or less severely than by the Saxon laws, or only upon indictment, with the exception of the cases mentioned in article 5, No. 1, as well as of offenses committed against the King and the royal family, in which cases the present penal code has to be enforced; if in conformity with the above regulations the judge has to refer to a foreign penal law, and this law inflicts upon the culprit a punishment which is inadmissible according to the present law, he cannot go beyond the wording of the law.

ART. 9.

Foreign punishment.

In case the culprit has already been punished for his offense by a competent tribunal of another state he cannot be punished again for the same offense by a tribunal of this country, unless he has at the same time made himself guilty by violating certain obligations incumbent on him toward the country, its sovereign, and his subjects, and then his previous penalty is to be taken into account even in the case of a sentence pronounced by an incompetent foreign tribunal.

ART. 312.

Trade-marks.

Whoever counterfeits, with the intention to deceive, the peculiar marks of merchants and manufacturers, is liable to be imprisoned for a term not exceeding four months, and if the imprisonment is only for two months he has to pay a fine up to two hundred thalers; the counterfeiter, however, can only be indicted by the merchant or manufacturer whose trade-marks he has forged.

Complaints of foreign merchants and manufacturers respecting such counterfeits can only be attended to if they can prove reciprocity on the part of the state to which they belong.

(Extract from the law respecting the acquisition and loss of Saxon citizenship of the 2d July.)

§ 9.

Obligation requiring naturalization.

Every foreigner in the kingdom of Saxony who desires (a) to become possessed of landed property in town or country, with personal residence;

(b.) Or to obtain naturalization according to the forms of municipal law; or

(c.) To exercise in the country a trade or profession which in a town would require naturalization; or

(d.) To hold a municipal office or some other employment in church or school which is not under government patronage, is obliged previously to become a Saxon subject.

Persons mentioned under "d" may apply for it to the respective authorities in whom the patronage is vested.

§ 10.

There is no necessity for naturalization—

(a.) For such as hold landed property in Saxony on which they are not domiciled and which is under foreign management;

(b.) For foreigners who acquire landed property in Saxony with habitual residence but usually reside abroad, as long as they continue abroad;

(c.) When a wholesale business or manufacture is established in the country by a foreigner residing abroad.

In the cases *b* and *c*, on condition that the obligations of citizenship which are attached to a property or undertaking are fulfilled by a proper native representative.

Foreigners under § 10, (*a*, *b*, *c*), participate in the privileges and duties of a Saxon subject only as far as the nature of their property or trade may admit or be sanctioned by the law.

The rights of political honors in Saxony cannot be exercised by them.

SWEDEN.

STOCKHOLM, *July 31, 1868.*

MY LORD: I have the honor to inclose copy of a letter I have received from Count Wachtmeister, forwarding for the information of Her Majesty's government a memorandum of the disabilities to which foreigners residing in Sweden are subjected by the Swedish laws.

I have, &c.,

J. PAKENHAM.

The Lord STANLEY, M. P., &c., &c., &c.

STOCKHOLM, *le 27 Juillet, 1868.*

MONSIEUR: Par une note du 24 du mois dernier, M. le Ministre d'Angleterre s'est adressé à M. le Baron d'Ugglas, faisant alors les fonctions de ministre des affaires étrangères, avec la demande d'obtenir pour le compte du gouvernement britannique des renseignements complets sur les disqualifications (disabilities) auxquelles la loi suédoise assujettit les étrangers résidant en Suède.

Je me vois maintenant à même de fournir ces renseignements, et je m'empresse de vous les transmettre en joignant ci-près le mémoire élaboré sur ce sujet au ministère de la justice.

Veuillez, &c.,

(Signé)

Mr. PAKENHAM, &c., &c., &c.

WACHTMEISTER.

[Translation.]

P. M.

Relative to the disqualifications to which foreigners settled in Sweden are subject, on the ground of existing Swedish statutes.

Swedish subjects only are eligible for election to the "Riksdag," (the Swedish legislative chambers.) (See § 22 of the "Riksdag" regulations.)

It does not appear, either, that foreigners are entitled to take part in the election of members of the "Riksdag," or of members of the municipal administrative bodies. (See § 8 of the statute relative to municipal administration in the rural districts; § 10 of the statute relative to municipal administration in towns; § 4 of the statute relative to church vestries ("Kyrkoråd") and school committees, ("Skolråd;") §§ 3, 5, and 7, of the statute relative to the "lands ting," (boards elected in provincial districts for the management of local communal affairs,) all of the 21st day of March, 1862, compared with §§ 6 and 14 of the "Riksdag" regulations.)

Offices of trust and service under the government may, as a rule, only be filled by natural-born Swedish men.

Foreigners may, notwithstanding, in certain cases, be called and appointed:

Firstly. To the post of professors or teachers at the universities, with the exception of posts for theological instruction; they may also be appointed teachers, or in any

other capacity, at other scientific, industrial, and artistic institutions, and also to the medical profession.

Secondly. To military posts; not, however, to that of commander of a fortress. (See § 28 of the constitution, "Regerings Formen.")

Foreigners belonging to countries in which Swedish subjects are entitled to inherit property also possess the same right in Sweden, (see chap. 15, § 2, of the statute of inheritance, "Arfda Balken,") so that they may thus become the holders of real and personal estate in this kingdom.

Foreigners may not otherwise hold real and personal estate in Sweden without the special permission of the King, (see the royal proclamation of the 3d October, 1829;) but there appears to be no legal hinderance to foreigners possessing the usufruct of real and personal estate on lease or otherwise.

Foreigners may not act as the guardians of minors or others. (See chap. 20, § 8 of the statute of inheritance, "Arfda Balken.")

With reference to the right of foreigners to exercise trade and industry in this country:

Foreigners are permitted to be part owners of vessels registered either for home or foreign trade; but they may not possess more than one-third of the tonnage of Swedish vessels, nor be the managing owners.

Foreigners who have obtained permission of the king to dwell in the kingdom, may, also, after special inquiry in each case, obtain permission to exercise trade, manufactures, mechanical employments, or any other calling. (See the royal statute of the 18th June, 1864.)

It should be specially observed that the King possesses the prerogative of adopting foreigners as Swedish subjects by act of naturalization. (See § 28, sec. 2 of the constitution, "Regerings Formen.")

The manner of such naturalization and its conditions are determined by the royal statute of the 27th February, 1858, which enacts generally—

That the rights of Swedish subjects may, on application to the King, be obtained by foreigners who have attained the age of 21, are of good repute, have resided in the kingdom for three years, and who possess the means of supporting themselves.

That such application shall be accompanied by a certificate of the age of the candidate, the country to which he belongs, the time when he arrived in the kingdom, his character, and the religious faith he professes.

And that the candidate, provided the application be granted, shall, within the term prescribed by the King, and before the proper authorities, attest that he has ceased to be a subject of the foreign power to which he formerly belonged, or otherwise resign, in writing, all the political privileges and rights he may possess in the said foreign country; and the candidate shall also take the oath of allegiance to the King as a Swedish subject.

Thus naturalized foreigners enjoy the same rights and privileges as natural-born Swedes, except in so far that they cannot be appointed members of the council of state, ("Statsråd.")

In fidem,

GEORGE FRENDBERG APGEORGE,
Sworn Translator.

STOCKHOLM, *July 30, 1868.*

SWITZERLAND.

BERNE, *July 4, 1868.*

MY LORD: In obedience to the instructions contained in your lordship's dispatch of the 16th ultimo, I have the honor to inclose herewith copy of a note dated the 26th ultimo, from the federal council, giving an account of the disabilities to which aliens residing in Switzerland are subjected by law.

I have, &c.

J. SAVILLE LUMLEY.

To the Right Hon. the Lord STANLEY, M. P., &c.

BERNE, *le 26 Juin, 1868.*

En réponse à la note que M. le Ministre de Sa Majesté britannique lui a adressée le 19^{ème} courant, le conseil fédéral a l'honneur d'annoncer à son excellence que les étrangers résidant en Suisse ne possèdent aucuns droits politiques, qu'ils sont exclus du service militaire, et que, s'il n'existe pas des traités, ils ne peuvent dans différents cantons acquérir des propriétés foncières sans la permission du gouvernement cantonal, ou même du grand conseil.

Des citoyens suisses naturalisés ne sont, à teneur de l'art. 64 de la constitution fédérale, éligibles au Conseil National qu'après cinq ans de possession du droit de cité.

Le Conseil Fédéral, &c.

Au nom du conseil fédéral, le président,

(Signé)

Le Chancelier,

DUBS.

SCHIESS.

A Son Excellence M. LUMLEY, &c.,

[N. B. In place of the matter relating to the United States is substituted A, a report from the examiner of claims on the statutory disabilities of aliens; B. Extracts from the analytical index to the treaties of the United States, showing what disabilities are removed from aliens by treaty.

A.—Report from the examiner of claims respecting the disabilities of aliens in the United States.

BUREAU of CLAIMS, November 5, 1873.

A synopsis of the law relative to the rights and disabilities of aliens in acquiring title to lands and in holding and alienating them under the Constitution and laws of the United States, the constitutions and laws of the several States, and the laws of the several Territories of the United States.

UNITED STATES.

Aliens are not prohibited from purchasing the public lands of the United States, either at public land sales or by private entry at the minimum price when such lands are declared subject to private entry.

Only such aliens, however, as have declared their intention (in the manner provided by the acts of Congress on the subject of naturalization) to become citizens of the United States, are entitled to the benefits of the acts of Congress granting the right of pre-emption to the public lands, and the act securing to citizens the right of free homesteads.

The rights and disabilities of aliens in acquiring title to lands either by inheritance or purchase, and in holding and alienating the same within the several States and Territories, are limited and regulated by the laws of the States and Territories respectively within which the land is situate. In the following enumerated States aliens have the right to acquire title to land by purchase, gift, devise, or descent, and to hold and alienate it in the same manner and to the same extent as citizens: Florida, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Michigan, New Jersey, Nebraska, North Carolina, Ohio, Oregon, South Carolina, and Wisconsin. In the States of Connecticut, Georgia, Iowa, Kentucky, Missouri, Mississippi, New Hampshire, and Nevada the same unconditional rights as to acquiring, holding, and conveying land are secured to aliens who are residents of the State.

In the following-named States an alien, before he is entitled to acquire, hold, and convey land, must, in addition to residence in the State, have declared his intention to become a citizen of the United States, before the title is acquired, or must do so after acquiring title within a time fixed by the law of the State, (the periods allowed for performing this condition vary in the different States:) Arkansas, Maryland, Indiana, Delaware, Rhode Island, Tennessee, Virginia, West Virginia, and Vermont.

In Alabama an alien cannot hold lands either by purchase or inherit-

ance. In California aliens cannot acquire by purchase, but may take by inheritance. A non-resident alien cannot hold for a longer period than five years; after that time the land is subject to escheat.

In New York alien inhabitants may purchase to the extent of one thousand acres. (Act of March 26, 1802.) Aliens taking by inheritance, title shall not be questioned if they declare intention to become citizens, (act of April 30, 1845,) nor on account of alienage of former owner. (Act of 24th of April, 1872.) Lands liable to escheat released in many instances by act of the legislature.

In Pennsylvania alien residents may take land by purchase or inheritance to the amount of five hundred acres, and may hold and alienate, within this limit, in the same manner as citizens.

In Texas aliens cannot acquire by purchase unless when the title emanates from the State directly to such alien purchaser. If an alien inherits land he is allowed nine years to become naturalized and take possession of the land.

In the Territories of Arizona, Colorado, and New Mexico aliens may take by purchase or inheritance, hold and convey lands in the same manner as citizens. No conditions annexed.

Dacotah.—There is no legislation on the subject, but by the organic act all inhabitants of the Territory may purchase and hold lands.

Idaho and Montana have no legislation on the subject, but have by special act adopted the common law of England.

In Washington Territory the law of Oregon is the law on the subject, and in the District of Columbia aliens take and hold in the same manner as citizens.

Respectfully submitted.

HENRY O'CONNER.

B.—Extracts from the analytical index to the treaties of the United States with other powers, showing what privileges are conferred upon aliens in the United States by treaties.

* * * * *

ASYLUM:

vessels and citizens seeking asylum by reason of stress of weather to be treated with humanity, and shall be allowed to repair and depart—Bolivia, Brazil, Columbia, (New Grenada,) Ecuador, France, (obsolete,) Guatemala, Hayti, Mexico, Morocco, (as to United States vessels,) Netherlands, (obsolete,) Nicaragua, Portugal, Prussia, San Salvador, Sardinia, Spain, Sweden, (see Sweden and Norway.)

to be exempt from the payment of duties on vessel or cargo unless entered for consumption—Hawaiian Islands, Morocco, (as to American vessels,) Sardinia.

to be subject to no duties or charges except pilotage, unless remaining longer than forty-eight hours in port—Columbia, (New Grenada.)

unloading and reloading not to be considered an act of commerce—Sardinia, Two Sicilies.

vessels seeking asylum to be treated as national vessels—Sardinia, Two Sicilies.

shelter shall not be given in ports of one power to enemies of the other power who have captured prizes from the other at sea—France, Great Britain.

consulates not to be used as asylum—Germany, Italy.

AUBAINE, DROIT DE: [See "*Personal property*," "*Real estate*."]]

abolished by treaty with Bavaria, France, (obsolete,) Hesse, Nassau, Saxony, Würtemberg.

* * * * *

DÉTRACTION, DROIT DE:

abolished by treaty with Bavaria, France, (obsolete,) Hanover, Hanseatic Republics, Hesse, Nassau, Saxony, Spain, Würtemberg, Sweden.

* * * * *

PERSONAL PROPERTY:

citizens of each, in the country of the other, may own personal property, and may dispose of it by gift, will, or in any other way, and may take such property by gift, purchase, will, or succession, paying only such dues as the inhabitants of the country would pay in such case—Austria, Bavaria, Bolivia, Brazil, Brunswick, and Luneburg, Columbia, (New Grenada,) Costa Rica, Dominican Republic, Ecuador, France, Guatemala, Hanover, Netherlands, (obsolete,) Mecklenburg-Schwerin, Mexico, Oldenburg, Hanseatic Republics, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Italy, Nassau, Nicaragua, Orange Free State, Paraguay, Portugal, Prussia, Russia, San Salvador, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Württemberg.

citizens of each in the country of the other may own and succeed as above, and on removal of the property it shall be exempted from all duty called "Droit de détraction"—France, (obsolete,) Sweden. [See "*Sweden and Norway*."]]

in case of the absence of persons who would be entitled to personal property so situated on the death of the owner, the property shall receive the same care which would be bestowed upon the property of a native—Austria, Bavaria, Brunswick, and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia.

in case of the absence of persons who would be entitled to personal property so situated on the death of the owner, the property shall receive the same care which would be bestowed upon the property of a native—Continued.

Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Württemberg.

disputes as to the inheritance of such property shall be decided by the courts of the country where the property is situated—Austria, Brunswick and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Württemberg.

REAL ESTATE:

citizens and subjects of each nation are to be on the footing of the most favored nation in the territories of the other—Italy.

citizens of each country may dispose of real estate in the territories of the other by will, donation, or otherwise—France, (obsolete,) Bavaria, Colombia, (New Granada,) San Salvador, Two Sicilies.

their heirs, legatees, and donees, being citizens or subjects of the other contracting party, may succeed to their real estate—Bavaria, Colombia, (New Granada,) France, (obsolete,) San Salvador, Two Sicilies.

citizens of each country may dispose of real estate in the territories of the other, where the laws of the state in which it is situated permit it to be done—Nicaragua, Swiss Confederation.

citizens of each country may possess real estate in the territories of the other, and dispose of it in the same manner as citizens can—France, San Salvador.

the United States are to recommend states where this is not permitted, to pass laws to allow it; and France reserves the right of establishing reciprocity.

where, on the death of the owner, real estate in the territories of the one power descends upon a citizen of the other, who is disqualified by alienage from taking, he shall be allowed two years to sell the land and withdraw the proceeds—Austria, Bavaria, Hesse, Nassau, Saxony, Württemberg.

he shall be allowed three years—Brazil, Ecuador, Guatemala, Hanseatic Republics, Swiss Confederation.

he shall have the longest period allowed by law—Bolivia, Dominican Republic.

he shall be allowed the time allowed by the law of the state or country—Brunswick and Luneburg, Nicaragua, Orange Free State, Portugal, Russia, Swiss Confederation.

he shall be allowed a reasonable time—Hanover, Hawaiian Islands, Portugal, Prussia, Russia, Sardinia, Spain, Mecklenburg-Schwerin.

the time allowed may be prolonged by the government in whose territories the land is situated—Austria, Hesse, Nassau, Saxony, Württemberg.

the tax or dues charged on the succession or withdrawal is to be the same as that imposed upon natives—Austria, Bavaria, Bolivia, Brazil, Brunswick, and Luneburg, Colombia, (New Granada,) Dominican Republic, Ecuador, France, Nicaragua, Orange Free State, Portugal, Russia, San Salvador, Sardinia, Swiss Confederation, Two Sicilies.

such tax or dues to be the same as imposed upon the most favored nation—Hawaiian Islands.

there shall be no duties of detraction—Bavaria, France, Guatemala, Hanover, Hanseatic Republics, Hawaiian Islands, Saxony, Spain, Prussia.

REAL ESTATE—Continued.

the property of absent heirs is to receive the same care as if it were the property of citizens—Austria, Bavaria, Hesse, Nassau, Saxony, Two Sicilies, Würtemberg.
all disputes relating to such real estate must be settled before the courts of the country—Bavaria, Hesse, Nassau, Orange Free State, Saxony, Swiss Confederation, Two Sicilies, Würtemberg.

RECIPROCAL PRIVILEGES OF CITIZENS OF EACH NATION WITHIN THE TERRITORIES OF THE OTHER:

the citizens of each may reside in the territories of the other, remaining subject to the laws—Argentine Confederation, Austria, Bolivia, Brazil, Colombia, (New Granada,) Costa Rica, Denmark, Dominican Republic, Ecuador, Great Britain, (obsolete,) Greece, Guatemala, Hanover, Hawaiian Islands, Hayti, Honduras, Italy, Mecklenburg-Schwerin, Oldenburg, Mexico, Nicaragua, Portugal, Prussia, Russia, San Salvador, Sardinia, Sweden and Norway, Swiss Confederation, Two Sicilies, Liberia.

the citizens of each may reside in the territories of the other—Borneo.

vessels and effects of citizens of each in the territories of the other are to be protected and defended—Sweden, (see Sweden and Norway,) Tunis.

citizens of each being within the territories of the other shall be exempt from forced military service—Argentine Confederation, Costa Rica, Dominican Republic, France, (obsolete,) Hawaiian Islands, Hayti, Honduras, Italy, Mexico, Nicaragua, Orange Free State, Paraguay, Switzerland, Two Sicilies.

from billeting of soldiers—Two Sicilies.

from contribution in kind or money for compensation for personal military services—Italy, Two Sicilies, [they shall *not* be exempt from such contribution—Orange Free State, Swiss Confederation.]

from forced loans—Argentine Confederation, Bolivia, Costa Rica, Dominican Republic, Hawaiian Islands, Honduras, Nicaragua, Paraguay, Two Sicilies.

from military exactions—Argentine Confederation, Costa Rica, Dominican Republic, Hayti, Honduras, Nicaragua, Paraguay.

from contributions—Bolivia, Nicaragua.

from contributions in time of war, in which case property is not to be taken without compensation paid in advance—Nicaragua; without compensation on the same footing as natives—Orange Free State.

from extraordinary contributions not general and established by law—Hawaiian Islands, Two Sicilies.

from contributions higher than those paid by natives—Costa Rica, Dominican Republic, Hayti, Honduras, Mexico, Orange Free State, Paraguay.

from judicial or municipal office—Italy.

the citizens of each shall not be liable to the embargo or detention of their vessels, cargoes, merchandise, or effects—Bolivia, Brazil, Colombia, (New Granada,) Ecuador, Guatemala, Italy, Mexico, Netherlands, (obsolete,) San Salvador, Spain, Sweden, Tunis; without compensation—Bolivia, Brazil, Colombia, Ecuador, Guatemala, Italy, Mexico, San Salvador; to be paid in advance—Bolivia; when it can be agreed upon—Italy.

their vessels are to be subjected to such embargo only in cases of urgent necessity, and an equitable indemnity shall be paid—Prussia.

their books and papers are not to be subjected to inspection without the order of a competent legal tribunal—Bolivia, Hawaiian Islands, Hayti, Two Sicilies.

the citizens of each country are to have a right to travel in the possessions of the other—Bolivia, Hawaiian Islands, Italy, Nicaragua, Two Sicilies.

citizens of each residing in the territories of the other may intermarry with natives—Nicaragua.

may enjoy freedom of religious belief, respecting at the same time the laws and usages of the country—Brazil, Bolivia, China, Ecuador, Guatemala, Hawaiian Islands, Hayti, Netherlands, (obsolete,) Colombia, (New Granada,) Paraguay, Argentine Confederation.

and also of religious worship, on conditions as named in the respective treaties—(as to consuls and agents,) Algiers, (obsolete,) Argentine Confederation, Colombia, (New Granada,) Costa Rica, Dominican Republic, Honduras, Mexico, Nicaragua, Paraguay, San Salvador, Sweden, (see Sweden and Norway.)

they are to have the liberty of burial—Argentine Confederation, Brazil, Bolivia, Colombia, (New Granada,) Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Netherlands, (obsolete,) Nicaragua, Mexico, Paraguay, San Salvador, Sweden, (see Sweden and Norway.)

on the breaking out of a war between the two countries, the citizens of each in the country of the other may remain and continue to trade so long as they behave peaceably—Argentine Confederation, Paraguay, Great Britain, (obsolete.)

all may remain whose occupations are for the common benefit of mankind—Italy, Prussia.

RECIPROCAL PRIVILEGES, &c.—Continued

six months are granted to merchants and citizens to arrange their business and with draw their effects—France, (obsolete,) Dominican Republic, Hayti, Two Sicilies

SUCCESSION:

the dues are to be the same as those paid by natives—Denmark, German Empire

WÜRTEMBERG.

STUTTGART, *June 24, 1868.*

MY LORD: I have had the honor to receive your lordship's dispatch of the 16th instant, requiring information as to the disabilities to which aliens are subject in Würtemberg.

I am able to reply without loss of time that the Würtemberg legislation on this subject is extremely liberal and is based entirely on reciprocity. An alien establishing himself in this country can claim by law every advantage and liberty possessed by a Würtemberg subject desirous of settling himself in a commune to which by birth he does not belong, if a similar liberty be granted to Würtemberg subjects in the country of the alien in question. In a contrary case the law reserves to the authorities the right of refusing to the aliens privileges which would not be enjoyed by Würtembergers in the foreign country in question, but the exercise of this right by the authorities is very seldom practiced, and would be so only under special circumstances.

In the case of an alien purposing to practice any trade or industry in Würtemberg all that is required is that he shall establish his nationality and furnish proof, if called upon to do so, (and this last does not often occur,) of the right of Würtembergers to do the like in the alien's own country. A case of this nature has, however, lately come before me, where difficulties were thrown in the way of a British subject employing work-people in a particular fancy manufacture practiced successfully in a Würtemberg town. The individuals who had hitherto had this trade in their hands were jealous of the Englishman's interference and success, and the probable consequent rise of prices of labor in the manufacture in question, and notwithstanding the manifest advantage to the town which the competition occasioned, the Englishman was so far incommoded as to be threatened with prohibition of his further proceedings by the authorities there, unless he produced his passport and a certificate from Her Majesty's legation that a Würtemberg subject would be permitted to engage in a similar trade in London. The man came to Stuttgart, and after being supplied with the papers in question, no further obstacle is interposed to his undertaking.

There is a certain latitude in the authority of the police with regard to aliens establishing themselves in Würtemberg by which, if the latter should conduct themselves in a disorderly manner, or render themselves obnoxious to the public peace or propriety, or even to the government authorities, they may be summarily sent out of the country; but the same right is exercised by the authorities of any commune in the country against Würtembergers not belonging to it, and who can be under the above circumstances turned out of the place.

It may therefore be answered to your lordship's question that no disabilities exist in Würtemberg against aliens, who may purchase real property and inherit the same as freely as natives.

I have instructed Mr. Baillie to report to me upon the state of the law in the Grand Duchy of Baden on the above subject.

I have, &c.,

E. C. R. GORDON.

The Right Honorable Lord STANLEY, &c.

APPENDIX No. III.

RIGHT OF ALIENS TO HOLD LANDS.—COLONIAL AND INDIAN LAWS.

MEMORANDUM BY MR. ABBOTT.

Aliens are debarred by the common law of England from holding, inheriting, or transmitting landed property, for, being under a foreign allegiance, they are supposed to be incapable of rendering service and homage to the sovereign of England, from whom it is a settled principle of tenure that the title to all lands in the kingdom is primarily derived.

That the forfeiture to the Crown of lands held by aliens has been enforced from a very early period appears from 17 Edward the 2d, stat. 2, cap. 12: "That the King

should have escheats of the lands of Normans, of whose fee soever they were, saving the service appertaining to the chief lords of the same fee; and this also was to be understood, that if any inheritance descended to any that was born in the parts beyond the sea, whose ancestors were, from the time of King John, under the allegiance of the Kings of France, and not of the Kings of England, as then late it had happened of the barony of Monmouth, after the death of John de Monmouth, (whose heirs were of Britain and other places,) King Henry, by the foresaid occasion, recovered many escheats of Normans' lands out of the fees of other men, and gave them to be holden of the chief lords of the fee, by the services due and accustomed therefore.

"An alien is entitled to purchase in fee-simple lands, tenements, or hereditaments, although he cannot hold them, for upon office found the King shall have them; and even on a covenant to stand seized, a use will arise for an alien; but of course the same result will follow as in the case of a purchase, and the same would take effect where an alien purchased lands in joint tenancy; and the King would, on office found, be entitled to a moiety.

"With respect to copyholds, it appears to be doubtful what rights an alien may acquire therein, for the lord is not to be prejudiced by losing his services and fines; but it is laid down in Watkins on Copyholds that an alien cannot be a copyholder; and it should seem that if an alien purchases any copyhold property it would escheat to the lord. However, the title of an alien in all respects will be good against all persons except the Crown in the case of freeholds, and as against the lord in case of copyholds." (Hansard's "Law Relating to Aliens," 1844, pp. 131-133.)

Previously to the act 7 and 8 Vict., c. 66, aliens could not take houses on lease for a term of years without danger of forfeiture.

The statute 32 Henry the 8th, cap. 16, enacted that no alien strangers, not being denizens, should take any leases of houses, under a penalty of 5*l.*; and all leases granted to strangers, artificers, or handicraftsmen, born out of the King's obedience, (nor being denizens) of any dwelling-house or shop within this realm, or any of the King's dominions, are declared to be void and of no effect; and the person so taking such lease forfeits 100*l.*, and the person letting, 100*l.* more; one moiety to the King, and the other to him that will sue for the same.

Lord Coke explains the law as follows: "As to a lease for years of a house for the habitation of a merchant stranger, being an alien, whose King is in league with ours, and a lease for years of lands, meadows, &c., upon office found, the King shall have it; but of a house for habitation he may take a lease for years, as incident to commerce, for without habitation he cannot merchandize or trade. But if he depart or relinquish the realm the King shall have the lease. So it is if he die possessed thereof, neither his executors or administrators shall have it, but the King; for he had it only for habitation as necessary for his trade or traffique, and not for the benefit of his executor or administrator. But if the alien be merchant, then the King shall have the lease for years, albeit it were for his habitation; and so it is if he be an alienemie. And all this was so resolved by the judges assembled together for that purpose in the case of Sir James Croft. Pasch. 29, of the reign of Queene Elizabeth."

Upon the report of the aliens committee of 1843, the law relating to aliens holding personal and leasehold property was amended by the fourth and fifth clauses of the act 7 and 8 Vict., c. 66:¹ (Naturalization Act, appended to my memorandum, Ad-denda I.)

"IV. And be it enacted that from and after the passing of this act every alien, being the subject of a friendly state, shall and may take and hold, by purchase, gift, bequest, representation, or otherwise, every species of personal property, except chattels real, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, privileges, and capacities as if he were a natural-born subject of the United Kingdom.

"V. And be it enacted that every alien now residing in, or who shall hereafter come to reside in, any part of the United Kingdom, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation, or otherwise, take and hold any lands, houses, or other tenements, for the purpose of residence or of occupation by him or her, or his or her servants, or for the purpose of any business,

¹ With regard to the question of aliens holding real property, the committee reported, "Several of the witnesses examined by the committee expressed a decided opinion that it would be expedient to permit aliens to acquire real property in this country with the same facility as in France and other European states. It is contended that foreigners are allowed to hold property in the funds to any extent; that by paying the cost of letters of denization they may acquire a legal right to hold any extent of land; that the law which forbids an alien to hold land is openly and easily evaded; and that this law, with all others to which the state cannot command obedience, would be much better abandoned and repealed. On the other hand, it has been remarked that were a better system of conferring native rights on foreigners adopted, and were the process rendered less expensive and more expeditious than at present, little practical evil would accrue from rendering a foreigner's capacity to hold land dependent on naturalization; and that as in Great Britain certain civil and moral duties are considered to be attached to the possession of landed property, which could hardly be performed by non-resident aliens, it would be well for the state, on this ground, to refuse the capacity of holding real property to foreigners not domiciled in this country."

trade, or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, and privileges, except the right to vote at elections for members of Parliament, as if he were a natural-born subject of the United Kingdom."

Doubts having arisen whether the act 7 and 8 Vict., c. 66, of 1844, extended to the colonies, an act was passed in 1847 (10 and 11 Vict., c. 83) declaring that it did not extend to the colonies, and that all laws, statutes, or ordinances duly passed or to be passed within Her Majesty's colonies or possessions abroad, conferring the privileges of naturalization within the limits of such colonies were valid, subject to the usual confirmation by the Crown.

The acts of the Imperial Parliament, constituting various colonies with independent legislatures, have expressly provided that the local legislatures should have power to deal with questions of land tenure, and certain colonies have accordingly made provisions by which aliens are enabled, within their limits, to hold land, either absolutely or on lease.

CANADA.

By the act of the Dominion of Canada (cap. 66 of 1868) no power is given to aliens who have not been naturalized to hold, inherit, or devise lands.

But by a consolidation act of Canada, (now the provinces of Ontario and Quebec,) cap. 8, s. 9, and a later act, cap. 16, of 1865, aliens have the same power as to holding, devising, &c., lands as natural-born or naturalized subjects of Her Majesty. And the 9th section of the former act is expressly kept alive by the act of the dominion.

In Nova Scotia aliens were empowered to hold, devise, &c., lands, by c. 34 of revised statutes, sect. 1, and this section is expressly kept alive by the act of the dominion.

In New Brunswick there does not appear to have been any like power conferred on aliens.

NEWFOUNDLAND.

No power is conferred upon aliens who have not been naturalized of holding, &c., lands. There is a general naturalization act, 20 Vict., c. 8.

PRINCE EDWARD ISLAND.

By act of 22 Vict., c. 4, (1859,) aliens are empowered to hold, &c., land up to the limit of 200 acres.

BRITISH COLUMBIA.

The colonies of British Columbia and Vancouver Island were united into one colony, "British Columbia," by imperial act, 29 and 30 Vict., c. 67; and by a subsequent local act, No. 37 of 1867, s. 10, which applies to the whole colony, aliens are empowered to hold lands, as if they had been natural-born British subjects.

CAPE OF GOOD HOPE.

By an act, No. 8 of 1856, all former laws, customs, or usages inconsistent with the act are repealed, and from its promulgation (June 4, 1856) aliens may purchase, acquire, and own fixed property in the colony, in like manner as natural-born subjects. But beyond this nothing in the act is to be taken as naturalizing any aliens, or bestowing upon them any of the privileges conferred by deeds of burghership.

NATAL.

By ordinance No. 6, of 1856, aliens are empowered to purchase or hold transfers of lands upon certain conditions, viz: The right does not extend to a period beyond that of four years from the date of registration of the transfer, and aliens may not alienate without license of the governor; and further, a fine is imposed unless letters of naturalization be taken out within four years from registration of the title.

By ordinance No. 7, of 1858, aliens are empowered to hold and give transfers of fixed property in the manner of natural-born subjects.

Under the law No. 1, of 1860, any alien who shall be the owner of landed property within the colony, and registered in his name, of not less a value than 300*l.*, is enabled to obtain naturalization without a previous residence of five years, as required from other aliens.

NEW SOUTH WALES.

By the colonial act 11 Vict., c. 39, 1847, aliens, subjects of a friendly state, may, without being naturalized, hold every species of personal property except chattels real. But for the purposes of residence or trade, they may hold land and houses for twenty-one years, with all the privileges of natural-born subjects, except that of voting at elections of members of the legislative council.

The law is therefore practically the same as in England.

QUEENSLAND.

The position of aliens is regulated by the aliens act of 1867, (31 Vict., No. 28,) the provisions of which, as regards aliens holding lands and houses, are similar to those of the aforesaid New South Wales act, 11 Vict., c. 39, of which colony Queensland formed part, until its separation in 1859.

VICTORIA.

The "aliens statute 1865" (28 Vict., No. 256) provides that alien friends resident in the colony may inherit, acquire, hold, and dispose of every description of property, whether real or personal, in the same manner as natural-born subjects of the Crown, and all dispositions of property made before the passing of the act to or by such aliens are declared to be valid.

SOUTH AUSTRALIA.

By the aliens act No. 5, of 1864, every person born of a mother who is a natural-born or naturalized subject is capable of holding real or personal estate.

Alien friends may hold every description of property, whether personal or real.

WESTERN AUSTRALIA, TASMANIA.

No power is conferred upon aliens who have not been naturalized of holding lands.

NEW ZEALAND.

The provisions of the alien act, 1866, (30 Vict., No. 17,) are the same as in New South Wales.

CEYLON.

No power is conferred upon aliens who have not been naturalized of holding lands. Special acts of naturalization are passed in each case.

BERMUDA.

The provisions of the act No. 11, of 1857, are practically the same as those in New South Wales.

BAHAMAS.

By an act, 25 Vict., c. 15, aliens are empowered to hold lands, houses, &c., for any term not exceeding twenty-one years, with full rights as natural-born subjects, except right of voting, &c.; and the governor is empowered to grant licenses to any company formed of aliens to hold lands for the purposes for which such company may be formed.

JAMAICA.

The colonial act, 14 Vict., c. 40, May, 1851, confers the same privileges on aliens with regard to leaseholds as the English act.

By 22 Vict., c. 1, (November, 1858,) every "immigrant," (*i. e.*, person introduced at the public expense from certain specified places,) who may obtain or become entitled to a certificate of industrial residence, becomes entitled to all the privileges of a natural-born subject within the colony.

TURKS AND CAICOS ISLANDS.

By ordinance No. 8, of 1857, (passed October 17, 1857, and confirmed February 13, 1858,) aliens may hold lands, salt ponds, &c., (except salt ponds at Turks Island,) on lease not exceeding twenty-one years, which lease may be renewed at the end of the term.

BRITISH GUIANA.

Letters of naturalization are required to enable aliens to hold property in shipping, but not to enable them to hold or bequeath property, or to qualify them for civil rights and duties within the colony.

BARBADOS.

By a local act (28 and 29 Vict., c. 4) aliens may hold leases for purposes of residence or occupation for any term not exceeding twenty-one years.

TRINIDAD, SAINT VINCENT, GRENADA, SAINT LUCIA, ANTIGUA, DOMINICA, TOBAGO.

No power is conferred on aliens who have not been naturalized of holding lands. In some of these islands special acts of naturalization are passed for each person; in others, as Saint Vincent and Grenada, there are general acts of naturalization.

NEVIS.

By aliens act of 1856 (No. 77) alien friends may take and hold lands by purchase or otherwise, as if they were natural-born subjects of Her Majesty.

SAINT KITTS AND ANGUILLA.

By a local act, No. 127, February 3, 1857, all domiciled or resident liberated Africans are to be deemed natural-born subjects and capable of holding real or personal estate. As are also the children, wherever born, of a mother a natural-born subject.

Aliens, subjects of a friendly state, may acquire and hold either real or personal estate as effectually as natural-born subjects, but they are not thereby made capable of becoming members of the council or of the assembly, nor of voting at the election of members of the assembly.

GIBRALTAR.

By order in council of 1859, aliens who have been resident and domiciled for fifteen years, or who, if resident and domiciled for less than fifteen years, have obtained the governor's special licenses, may hold lands as if they were British subjects.

SIERRA LEONE.

By the imperial act 16 and 17 Vict., c. 86, (August 20, 1853,) liberated Africans, domiciled or resident in Sierra Leone, are to be deemed within the colony to be natural-born subjects, and capable of holding and transmitting any estate, real or personal, within the colony. Power is, however, given to the local legislature to alter or repeal any of the provisions of the act so far as they relate to the right to real property.

HONDURAS.

The naturalization act 18 Vict., c. 18, (July 19, 1855,) is the same as the South Wales act.

By the 23d section of the immigration act, 24 Vict., c. 5, (1861,) every immigrant, born out of the British dominions, who shall have obtained or become entitled to a certificate of industrial residence, is entitled to all the privileges of a naturalized alien, except the capability to become a member of the assembly, which privilege, however, may be allowed by the superintendent.

HONG-KONG.

By the colonial ordinance, No. 2 of 1853, aliens may acquire and dispose of real estate within the colony as effectually as natural-born subjects.

[The foregoing information, so far as it relates to the colonies, is in part compiled from the colonization circular, No. 27, 1868, issued by the emigration commissioners, and has been revised by Mr. Holland, legal adviser to the colonial office.]

INDIA.

Lord Brougham, in the case of the Mayor of Lyons *v.* The East India Company, cited in "Hansard's law relating to aliens," said, with regard to the right of aliens to hold leasehold and freehold property in India, "No instance has been produced, indeed it is agreed on all hands that no instance has ever existed of a forfeiture to the Crown for this cause. There is no such thing known in those parts as an inquisition of office or any analogous proceeding, or any proceeding whatever for entitling the Crown, or those exercising its delegated authority, to the real estate or chattels real of aliens within the district. When those foreigners die their real estates have descended to their heirs, or been taken by their devisees, or been administered as assets by their executors, without any claim ever having been made by the sovereign power, which would here in England have been entitled without any office. Ejectments have been brought, and the parties in possession have never been advised to set up the defense that the lessor of the plaintiff claimed by descent from an alien; and dower has been assigned to widows alien also." (Moore's Privy Council Cases, vol. 1, p. 175.)

It appears from the printed "Proceedings of the Government of India Revenue, March, 1868," that a report has been prepared by that government on the state of the law as to the right of aliens to hold lands in India.

This report states that the point was fully raised in the year 1834, when, in the case of General Claude Martin's will, "it was distinctly held by the supreme court at Calcutta that the English law as to aliens had never been introduced into India. * * * This decision gave rise to considerable excitement at the time, and the government of India addressed the court of directors very strongly on the subject."

The decision of the Calcutta court was confirmed on appeal by the Privy Council in the judgment of Lord Brougham above quoted.

Lord Brougham's ruling was accepted as the law on the subject by Sir C. Jackson, as advocate-general, in 1852.

It seems from the "Proceedings" that it may be open to doubt "whether the English alien law has, in effect, been extended to India by any more recent legislation, either English or Indian, and whether the transfer of the executive administration in India from the company to the Crown, by the 21st and the 22d Vict., c. 106, has in any way affected the case."

There is nothing in the *Indian* law disabling aliens, as *being aliens merely*, from holding lands. But there have been special regulations showing the jealousy with which the acquisition of land by alien Europeans has been regarded. (Bengal Regulations of 1793, 1795, 1803, 1813; Bombay, 1827.)

Indeed, up to 1834 no European, whether British or alien, could acquire land or rights in land except in certain specified cases, or by the permission of the governor-general, in either Bengal or Bombay. The law in Madras was not so accurately defined, but was substantially the same.

An act of 1837, the draught of which was drawn by Lord Macaulay in 1835, was passed partly to clear up doubts which had arisen under the charter act of 1833, regarding the nature of the estate which European British subjects could hold in land in India.

"In the original draught of that act, in Lord Macaulay's handwriting, stands, "It shall be lawful for any subjects of His Majesty to acquire and hold," &c.

But in the course of circulation the words "subjects of His Majesty" were struck through, and the words "any person of whatever nation" substituted. Eventually the original words were restored, and the act passed accordingly.

The jealousy with which the residence of Europeans, and especially alien Europeans, in the interior was looked upon by the East India Company, is ascribed to the doubts which existed as to the jurisdiction of the company over such European residents.

As a matter of fact, nevertheless, the courts of the East India have long since assumed (as early as 1796) and exercised, without demur, such jurisdiction.

The report of the "Proceedings" concludes with a recommendation "that there is no longer any reason of good policy why European foreigners should not be placed in the same position as European British subjects with respect to holding land in India.

* * * In practice European foreigners have resided without let or molestation, and have even held landed property all over India for the past forty or fifty years at least. * * *

"On the other hand, there are valid objections to the state of the law as it now exists. It disinclines cautious foreigners against acquiring property, and * * * it is quite possible that it may be made an instrument of private annoyance and injury.

* * * During the Indigo disturbances in 1860-'61, one of the most turbulent and unpopular of the indigo planters in Behar was a Spaniard, Mr. Tolano, who was not at that time even naturalized, and who had no special permission to hold land. * * * Had the state of the law been known it would certainly have been taken advantage of by his native opponents, to his great injury and loss."

In accordance with this recommendation the following minute was issued on the 11th of April, 1868, ("Proceedings of the Government of India, Home Department, Legislative, April, 1868: ")

"The governor-general in council has considered it expedient that all the regulations and acts which provide against the acquirement of land by Europeans in India should be repealed.

"2. They have no effect as regards Europeans, being British subjects, since Act IV of 1847, and they can therefore only operate against European foreigners.

"His excellency in council considers that the retention of these lands, as they now stand, is not only unnecessary and invidious, but might afford an opportunity for malicious injury.

"4. His excellency in council accordingly caused all the existing Bengal laws and regulations of this nature to be included in the bill for repealing certain enactments which have ceased to be in force or have become unnecessary, which became law as Act VIII, of 1868, on Thursday, the 2d instant.

"5. It is understood that both the governments of Madras and Bombay have similar repealing bills under consideration.

"Resolved, That the attention of the governments of Madras and Bombay be drawn to the expediency of repealing any laws affecting the free acquirement and enjoyment

of immovable property, or rights in such property, by European aliens which may exist in the code of either presidency; as, for example, the Bombay Regulation XXIII of 1827, sections 3 and 4, and the Madras Regulation of 1803, section 41."

CHAS. S. A. ABBOTT.

WOODSIDE, LYNMOUTH, BARNSTABLE, *September 24, 1868.*

APPENDIX No. IV.

POSITION OF ALIENS AND NATURALIZED ALIENS IN ENGLAND.

[*N. B.—This appendix is omitted, the statute of 1870 having made new provisions.*]

APPENDIX No. V.

NATIONALITY OF CHILDREN BORN OF ALIEN PARENTS.

The accompanying circular was sent from the foreign office to her Majesty's representatives at European courts:

FOREIGN OFFICE, *August 11 1868.*

"I have to instruct you to furnish me with a report for the information of the Naturalization Commission on the state of the ——— law with regard to the nationality of children born of alien parents within the ——— dominions."

AUSTRIA.

VIENNA, *December 8, 1868.*

MY LORD: Having addressed myself to Baron Beust by note of the 22d ultimo, to remind his excellency of the request addressed to him by Lord Bloomfield in August last, to be informed as to the state of the laws in Austria, relative to children born of alien parents in this country, I have now the honor to transmit to your lordship copy, with translation by Mr. Grosvenor, of a note which, in the absence of Baron Beust, I have received from Baron Vesque.

Baron Vesque informs me that in the western (Cisleithan) portion of the empire, all children born of foreign parents are treated as aliens, illegitimate children following the nationality of the mother. But Baron Vesque promises that his reply to Lord Bloomfield's first note will be more complete when he has received the information as regards Hungarian law which he has applied for to the Hungarian government.

I have, &c.,

A. G. G. BONAR.

The Lord STANLEY, M. P., &c., &c., &c.

[Translation.]

In accordance with the wishes expressed by his excellency Lord Bloomfield, &c., in his note of the 15th of August, 1867, and referred to by Mr. Bonar, &c., in his note of the 22d of November last, the imperial royal ministry for foreign affairs has the honor to inform Her Britannic Majesty's chargé d'affaires, that according to the laws in force in the western half of the Austro-Hungarian monarchy, children born of foreign parents within the limits of the lands represented in the Austrian Reichsrath are treated as aliens on account of their birth.

This rule applies as well to legitimate as to illegitimate children, and in the case of the latter, the nationality of the mother is decisive.

In order to furnish Her Majesty's government with authentic information respecting the provisions of the Hungarian legislature as regards the nationality of children born of foreign parents in Hungary, the imperial royal ministry for foreign affairs addressed a memorandum on this subject to the royal Hungarian ministry, but as no answer has up to this date been received, this matter will now be brought again to the recollection of the Hungarian ministry, and the imperial royal ministry for foreign affairs will not fail to communicate the desired information to Her Britannic Majesty's chargé d'affaires so soon as they shall have obtained it.

The undersigned avails himself, &c.

Signed for the minister for foreign affairs,

S. T. VESQUE.

VIENNA, *December 21, 1868.*

MY LORD: With reference to my dispatch to Lord Stanley, of the 8th instant, informing his lordship, in reply to the queries addressed to me in his dispatch No. 70, circular of the 11th of August, that according to the law of the western (Cisleithan) portion of the empire all children born of foreign parents in Austria are regarded as aliens, illegitimate children of aliens being regarded to follow the nationality of the mother, I have now the honor to inclose to your lordship a translation of a note I have this day received from the imperial chancery of State, stating that the laws of Hungary on that point are identical with those of Cisleitha.

I have, &c.,

A. G. G. BONAR.

The Right Hon. EARL of CLARENDON, K. G., &c., &c., &c.

In sequel to the note of this department, of 30th of last month, the ministry for foreign affairs has the honor to inform Mr. Bonar, &c., that as regards the nationality of illegitimate children born in this country of alien parents the laws in force in the lands belonging to the Hungarian Crown are identical with those of the western portion of the Austro-Hungarian monarchy.

The undersigned avails, &c.,

BIEGELEBEN.

VIENNA, *December 20, 1868.*

BADEN.

STUTTGART, *September 2, 1868.*

MY LORD: In compliance with the instructions contained in your lordship's dispatch marked circular, of the 11th instant, I made the necessary inquiries in order to ascertain the state of the Würtemberg law with regard to the nationality of children born of alien parents within this kingdom, and the following is the result which I am now able to transmit to your lordship.

According to Würtemberg law all children born of alien parents in this kingdom are considered as inheriting the nationality of their parents; that is to say, all legitimate children the nationality of their father, and illegitimate children that of their mother; and the fact of a child of alien parents having been born on Würtemberg territory does not, according to the laws in force here, exercise any influence whatsoever upon the question of its nationality.

I have the honor to inclose the accompanying translation of a note from Baron Freydorf to Mr. Bailie, respecting the Baden law on this subject.

I have, &c.,

G. J. R. GORDON.

The LORD STANLEY, M. P., &c., &c., &c.

[Translation.]

CARLSRUHE, *August 28, 1868.*

The Baden legislature proceeds upon the principle that children born of a legally recognized marriage follow the nationality of the father, and illegitimate children that of the mother, consequently the children of a foreign father born in the Grand Duchy, of a legally recognized marriage, or illegitimate children of a foreign mother are regarded as aliens.

Nevertheless, article 9 of the Baden "Landrecht" provides that any one born in the country of a foreign parent shall be entitled within a year after attaining his majority (which takes place in Baden after the age of 21) to claim the rights of a native-born subject, only if he resides in the Grand Duchy he must at the same time declare that he intends to fix his abode there, and, if he is in a foreign country, he must promise to fix his abode in the Grand Duchy, and actually settle there within a year after having made the promise.

According to article 9a. of the Baden "Landrecht," however, this claim must be submitted to the consideration of the government, for their recognition or refusal of the same, whenever such alien possesses by birth the right of nationality or a fixed abode in another state.

The undersigned avails, &c.,

FREYDORF.

EVAN M. BAILIE, Esq.

BAVARIA.

MUNICH, *August 20, 1868.*

MY LORD: With reference to your lordship's circular dispatch of the 11th instant, I have the honor to transmit herewith a copy and a translation of a note of the 17th instant, which I received yesterday evening from Mr. de Daxenberger, in Prince Hohenlohe's absence, in answer to my inquiries relative to the state of the Bavarian law with regard to the nationality of children born of alien parents within the Bavarian dominions.

From this note your lordship will perceive that according to Bavarian law the children of aliens, even when born in Bavaria, do not acquire the Bavarian citizenship, but are considered and treated as aliens, until they shall have been naturalized in the same manner as all emigrants; but that, on the other hand, the children of immigrants begotten after the naturalization of their parents are considered as Bavarian subjects.

I have, &c.,

HENRY F. HOWARD.

The LORD STANLEY, M. P., &c., &c., &c.

[Translation.]

The undersigned, in answer to the note of Sir H. F. Howard, &c., &c., &c., of the 14th instant, has the honor to reply that according to Bavarian law the children of aliens, being persons not belonging to the Bavarian state, even when begotten and born in Bavaria, do not acquire the Bavarian citizenship, but are considered and treated as aliens until they shall have been naturalized in the same manner as all immigrants.

On the other hand, the children of immigrants begotten after the naturalization of their parents are considered as Bavarian subjects.

The undersigned, &c.,

V. DAXENBERGER.

Sir H. F. HOWARD, K. C. B., &c., &c., &c.

BELGIUM.

BRUSSELS, *August 20, 1868.*

MY LORD: In reply to your lordship's dispatch, marked circular of the 11th instant, in which I am instructed to report on the state of the Belgian law with regard to the nationality of children born of alien parents in the Belgian dominions, I have the honor to inclose herewith copies of the two articles of the civil code which afford the information desired.

I beg further to explain that, according to the doctrine and jurisprudence most generally received, the individual who complies with the conditions of article 9 of the civil code is considered a Belgian subject from the day of his birth, and not from the day on which he may make the declaration, the declaration having a retroactive effect; therefore the declaration once made the individual making it is considered as never having been a foreigner.

I have, &c.,

HOWARD DE WALDEN AND SEAFORD.

The LORD STANLEY, M. P., &c., &c., &c.

[Translation.]

Every individual born in Belgium of a foreigner may, during the year which follows the epoch of his majority, reclaim the quality of a Belgian, provided that, in case he shall reside in Belgium, he declare that it is his intention to fix his domicile there, and in case he shall reside in a foreign country he makes his submission to fix his domicile in Belgium, and establish himself there within one year, from the date of the act of submission. (Article 9, civil code.)

The person born in Belgium of alien parents residing there, who shall have neglected to make the declaration prescribed by the ninth article of the civil code, may, if he is an inhabitant of the country, ask for full naturalization without being required to show that he has rendered eminent services to the state. (Law of September 27, 1835, article 2.)

DENMARK.

BRITISH LEGATION, COPENHAGEN,
July 30, 1868.

MY LORD: As a supplement to my dispatch of the 27th ultimo, on the position of aliens in Denmark, I have the honor to inclose herewith, at the request of the naturalization commission, the written opinion of Mr. Brock, a distinguished Danish lawyer, with reference—

1. To the oath required of aliens entering on certain professions.
2. Whether the birth in Denmark of the son of an alien constitutes a Danish subject.

Your lordship will see by the inclosed document that—

1. The "Borgherskab" or Burgherbur oath was abrogated in 1858. The oath now taken by brokers, translators, &c., is non-political, and limited to the faithful performance of their office.

2. The son of an alien born in Denmark is considered a Dane, to all intents and purposes, so long as he remains in Denmark.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P., &c

COPENHAGEN, July 26, 1868.

SIR: Your excellency has asked my opinion on the following questions:

1. Is the "Borgerbur" oath still required for entering on certain professions; and, if so, what professions?

2. Does the fact of birth in Denmark constitute a son of an alien a Danish subject?

Answer, 1. The "Borgerbur" oath required by the Danish law for entering on professions of different kinds has been abolished by the law of December 29, 1857. The oath still taken by brokers, translators, and such persons of public trust, that they will faithfully perform the duties imposing on their office, has no influence upon their situation as subjects of the Danish Crown, and is no oath of allegiance.

2. The son of an alien born in Denmark is regarded a Dane if he remains here.

I have, &c.,

GUSTAV BROCK,
Advocate of the Supreme Court.

Sir CHARLES L. WYKE, K. C. B., &c.

BRITISH LEGATION, COPENHAGEN,
August 17, 1868

MY LORD: In reply to your circular marked of the 11th instant, instructing me to furnish a report for the information of the naturalization commission on the state of the Danish law with regard to the nationality of children born of alien parents within the Danish dominions, I have the honor to refer your lordship to my dispatch marked of the 28th ultimo, which contains the information required by the commission with reference to this subject.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P., &c

FRANCE.

Code Napoleon, Civil Code, book I, ch. 1.

"9. Any person born in France, being the child of a foreigner, may, in the year following the time of his attaining his majority, claim French citizenship; provided that, in case of his residing in France, he declare that it is his intention to fix his domicile there, and that, in case of his residing in a foreign country, he promise to fix his domicile in France, and that he establish it there within one year from the date of making such promise.

"10. Any child of a Frenchman born in a foreign country is French. Any child born in a foreign country, whose father is a Frenchman who has lost his French citizenship, can always recover such citizenship by complying with the formalities prescribed in article 9.

"C, 11, section I.

"17. French citizenship shall be forfeited, first, by naturalization in a foreign country; second, by the acceptance, when not authorized by the King, of public functions

conferred by a foreign government; third, finally, by any settlement in a foreign country without intention to return. A settlement for commercial purposes shall not be considered as having been made without intention to return.

"18. A Frenchman who has lost his French citizenship can always recover it by returning to France with the authorization of the King, and by declaring that he desires to settle there, and that he renounces every distinction contrary to the French law."

The ninth article of the Code Napoleon was modified by a law of 1851:

"29-29th of January and 7th February, 1851, (10th series, No. 2, 730; Article 9, C. N.,) law relating to persons born in France, and being the children of foreigners who were themselves born there, and the children of naturalized foreigners.

"ARTICLE 1. Any person is French who was born in France and is the child of a foreigner who was likewise born there, unless within the year following the time of his attaining his majority he claims foreign citizenship by a declaration made either before the municipal authorities of his place of residence or before the diplomatic or consular agents accredited in France by the foreign government.

"Article 9 of the civil code is applicable to the children of a naturalized foreigner, although they may have been born in a foreign country, if they were minors at the time of their father's naturalization. With regard to children born in France or abroad, who were of age at the same time, article 9 of the civil code is applicable to them in the year following the date of the aforesaid naturalization."

GREECE.

ATHENS, *September 3, 1868.*

MY LORD: With reference to your lordship's circular dispatch of the 11th ultimo, I have the honor to inclose herewith a copy of a report, drawn up by the lawyer employed by this legation, on the state of the Greek law with regard to the nationality of children born of alien parents within the Greek dominions.

I have, &c.,

C. M. ERSKINE.

The Lord STANLEY, M. P., &c.

What is the condition of children born on Greek soil of foreign parents?

As a general rule, the circumstance of a child's having been born on Greek soil does not cause him to be considered as a Greek; his origin alone does so. In order, therefore, to settle the question whether a child is a Greek or not, a single thing is to be considered—of whom was he born? If the child of a Greek, he is a Greek himself, in whatever country he was born. If his parents are foreigners he is a foreigner like them, even if he was born in Greece. (Article 14, No. 1, of the civil code.)

It must, however, be remarked that the circumstance of a child's having been born on Greek soil produces a double effect in his favor.

1. It enables him to acquire Greek citizenship more readily than an ordinary foreigner. He has, in fact, but to fulfill three conditions:

(a.) To declare, while residing in Greece, that it is his intention to fix his domicile there, and to so establish it within one year from the date of such declaration;

(b.) To make this declaration within one year from the date of his majority; and

(c.) To take the oath of allegiance as a Greek subject before the competent monarch. (Articles 19 and 17 of the civil code.)

2. It causes it to be taken for granted, when his father and mother are unknown, that he is the child of Greek parents, and that he is consequently a Greek himself. (Article 114, No. 3 of the civil code.)

The principle that the origin of the child determines his nationality, independently of the place of his birth, presents no difficulty when his father and mother are both foreigners; the child is a Greek in the first case, a foreigner in the second. What, however, is to be decided upon if the one is a Greek and the other a foreigner? Shall the child follow the condition of his father or that of his mother?

If the child was born in lawful wedlock this question will rarely arise, for as the wife follows the conditions of her husband, (articles 21 and 25 of the civil code,) both husband and wife will, in most cases, be both Greeks or both foreigners. Still, as the principle enunciated by these articles must be understood in this restricted sense, that the woman acquires the condition which her husband has at the time of her marriage, the contrary hypothesis may arise. Then will the child's condition be that of his father or that of his mother, the father being the head of the family? Article 14, No. 1, decides that the nationality of the child will be that of the father.

As to a child born of a foreign mother and a native Greek father, if he is legally

recognized by his father alone, or by his father and his mother, his condition will be that of his father. (Article 14, No. 5, of the civil code.) On the other hand, it must be decided that if he has been recognized by his mother only, he is, like her, a foreigner.

He who is born of a Greek mother and a foreign father is considered a Greek subject if he has not been recognized by the latter. (Article 14, No. 2, of the civil code.) If he has been recognized by him, in order to obtain Greek nationality he must comply with the formalities already mentioned in article 17 of the civil code. (Article 19 of the same code.)

It remains to examine the question whether the child acquires the condition which his father or his mother had at the time of his conception or of his birth. The question is an interesting one, for the person whose condition the child is to follow may, in the interval between his conception and his birth, have ceased to be a Greek by naturalization abroad; or, having been a foreigner, she may have become a Greek by naturalization in Greece.

Article 11 of the civil code proclaims the Roman maxim, *Infans conceptus pro nato habetur, quoties de ejus commodis agitur*; and since, in the eyes of the Greek law, it is better for the child to be born a Greek than a foreigner, we will say that it is sufficient, in order that a child may be born a Greek, for the person whose condition he is to follow to have been a Greek, either at the moment of the conception or at the moment of his birth, or even in the interval between these two dates.

Children born between the two or three years required for the naturalization of a foreigner (according as he is or is not of Greek origin) become Greeks by the naturalization of their father. (Article 18 of the civil code.) As to children born to him before the declaration required for naturalization, they will remain foreigners, as will also his wife; but if at the time of his naturalization they were minors, they may acquire Greek nationality by manifesting their desire to do so, within the year following the date of their attaining their majority, before the communal magistrate of the place where they may desire to fix their domicile, by settling in Greece, and by taking the oath of allegiance as Greek subjects before the competent monarch. (Article 17 of the civil code.)

Article 20 of the same code decides that a child born of parents who had lost their Greek citizenship may always acquire such citizenship by complying with the formalities prescribed in article 17. As the civil code of Greece, in conferring citizenship, considers only the origin, there is no distinction to be made if the child of a former Greek was born abroad or in Greece; if those whose condition he follows are foreigners he is necessarily born a foreigner like them, whatever may be the place of his birth. It must be remarked, however, that the child born of an ex-Greek is treated more favorably than a child born in Greece of an ordinary foreigner; the one may *always*, that is to say, at any age, provided he be of age, claim Greek citizenship; he can do so, on the contrary, only within the year following the date of the attainment of his majority.

This difference is readily explained. The child born of an ex-Greek being a Greek by nature, the law does not doubt his attachment to Greece; at whatever time he may present himself it eagerly accepts him, convinced that the feeling which causes him to act can be but love for his natural country. The case is not the same with the child of a foreigner born in Greece; he is not at all a Greek. It may be that he feels a fondness for Greece since he was born there, but if he is too tardy in making known his desire to bear the title of a Greek, the law, being warned by his indifference, presumes, when he presents himself later, that he comes only for his own personal interest, and therefore treats him like an ordinary foreigner.

ATHENS, August $\frac{1}{3}$, 1868.

D. G. RHALLY,
Advocate, Doctor of Laws.

HANSE TOWNS.

HAMBURG, September 8, 1868.

MY LORD: I have the honor to acknowledge the receipt of your lordship's circular dispatch under date of the 11th of August, instructing me to report as to the law of the Hanse Towns with respect to the nationality of children born of alien parents within their respective territories, and beg leave to report as follows:

According to the law of Lubeck all legitimate children born of alien parents within its territory take the nationality of the father, while those which are illegitimate take that of the mother until another nationality is acquired for them.

The law in force in Bremen prescribes merely that children of alien parents who are not citizens of Bremen are not to be regarded as subjects of that state, and makes no conditions as to their being born in wedlock or not.

According to the law of Hamburg the nationality of the parents is transmitted to the children without any restrictions whatever as to the place of birth, except in the case of illegitimacy, when the children take the nationality of the mother.

I have, &c.,

GEORGE ANNESLEY,
Acting Consul-General.

The Lord STANLEY, M. P., &c.

HESSE-DARMSTADT.

No. 7.]

DARMSTADT, *September 9, 1868.*

MY LORD: Upon the receipt of your lordship's circular dispatch of the 11th ultimo I addressed a note to Baron Dalwigk, of which I have the honor to inclose herewith a copy, and I have now received from his excellency the answer, of which a copy is likewise herewith transmitted.

Your lordship will learn from this correspondence that children born of alien parents within the grand ducal dominions retain their "status" as aliens, unless they are appointed to a public employment in the grand duchy, or are naturalized by a special act.

I have, &c.,

R. B. D. MORIER.

The Lord STANLEY, M. P., &c.

BARON: Having been instructed by my government to furnish it with a report concerning the laws relating to the nationality of children born in the grand ducal territory of parents not natives of the grand duchy, I have recourse to your excellency's kindness, begging you to be pleased to furnish me with information concerning the laws in question.

I avail myself, &c.,

R. B. D. MORIER.

His Excellency BARON DALWIGK, &c., &c., &c.

SIR: In reply to the communication which you were pleased to address to me under date of the 19th ultimo, I have the honor to inform you that, according to article 13 of the constitution of the grand duchy, citizenship is acquired—

1. By birth, for those whose father or mother are at that time Hessian subjects.
2. By marriage, for a foreign woman who marries a Hessian subject.
3. By appointment to a public office.
4. By special admission.

Consequently, children born in the grand ducal territory of foreign parents are regarded as foreigners until they have acquired Hessian nationality by one of the means above mentioned.

Accept, &c.,

BARON VON DALWIGK.

DARMSTADT, *September 7, 1868.*

ITALY.

Codice Civile del Regno d'Italia, lib. I, tit. 1.

"4. The child of a citizen is a citizen.

"5. If the father has lost his citizenship before the birth of the child, the latter is reputed a citizen if he is born within the state and resides therein.

"Nevertheless, on becoming of age, according to the laws of the realm, he may elect to take the quality of an alien on making a declaration before the authorities of the civil state in which he resides, or, if in a foreign country, before the royal diplomatic or consular agents.

"6. The child born in a foreign country of a father who has lost his citizenship before the child's birth is reputed as alien.

"He can, however, elect to take the quality of a citizen on making a declaration as prescribed by the preceding article, and fixing his domicile in the kingdom during the year in which he makes such declaration.

"Nevertheless, if he has accepted public employment in the kingdom, or has served

in the army or navy, or otherwise satisfied the requirements of the conscription without seeking exemption as an alien, he shall be considered a citizen without further process.

"7. When the father is unknown the child of a citizen mother is a citizen.

"When the mother has lost her citizenship before the birth of the child, the dispositions of the two preceding articles become applicable.

"If even the mother is unknown, a child born in the kingdom is a citizen.

"8. The child of an alien who has established his domicile within the kingdom uninterruptedly for ten years is considered a citizen; residence for commercial purposes is not sufficient to constitute domicile.

"The child can, however, elect to be considered an alien, on making the declaration prescribed in article 5.

"When the alien has not established his domicile in the kingdom for ten years, the child is considered an alien; but the dispositions of the two first paragraphs of article 6 are applicable to the case."

Extract of paragraph 10: "The wife and minor children of an alien who has obtained citizenship become citizens, on the condition of their also establishing their residence in the realm, but the children can elect to take upon them the quality of aliens on making the declaration prescribed in article 5."

Extract of paragraph 11: "The wife and minor children of one who has lost his citizenship become aliens, unless they have continued to reside within the realm.

"Nevertheless, the wife can re-acquire citizenship in the case and by the means stated in the second paragraph of article 14, and the children according to the second and third paragraphs of article 11."

NETHERLANDS.

No. 280.]

THE HAGUE, *September 14, 1868.*

MY LORD: With reference to your lordship's dispatch circular No. 43, of the 11th ultimo, instructing me to furnish a report, for the information of the naturalization commission, on the state of the Netherlands law with regard to the nationality of children born of alien parents within the Netherlands dominions, I have the honor herewith to transmit to your lordship copy of a note, dated the 3d instant, from the Netherlands minister of foreign affairs, supplying information on the subject.

I have, &c.,

E. A. J. HARRIS.

The Lord STANLEY, M. P., &c.

THE HAGUE, *September 3, 1868.*

MR. MINISTER: By your note of 17th August last you were so good as to request information from me respecting the nationality of children born of foreign parents on the territory of the kingdom. I have the honor to inform you that a distinction should be made between entire nationality, extending to the exercise of civil and political rights, and partial nationality, comprising only the enjoyment of civil rights.

Entire nationality is acquired by children born of foreign parents—

1. When they are born, either within the kingdom or abroad, of parents settled in the kingdom in Europe.

Article 3 determines the conditions of the settlement.

2. When they are born in the kingdom in Europe of parents who are not settled there, and the year after having reached the age of twenty-three, by authority of their place of birth, declare their intention to continue to reside there.

The children of parents born abroad enjoy only partial nationality.

1. Those who are born, either on the territory of the Netherlands or in a foreign country, of parents settled in the kingdom or its colonies.

2. Those who are born in the kingdom in Europe of parents who were not settled there when they themselves settled.

Hoping that the foregoing will be sufficient for the end which the commission of naturalization has in view,

I take this occasion, &c.,

ROEST VAN LIMBURG.

Vice-Admiral HARRIS, &c.

PORTUGAL.

No. 33.]

LISBON, *August 27, 1868.*

MY LORD: On the receipt of your lordship's circular dispatch of the 11th instant, I addressed a note to the minister of foreign affairs, requesting his excellency to inform me as to the actual state of the Portuguese law with regard to the nationality of children born of aliens within the Portuguese dominions.

In his excellency's note to me of the 22d instant, in reply to the above, and of which I have the honor to inclose a copy and translation, your lordship will find a statement of the Portuguese law on the matter.

I have, &c.,

CH. A. MURRAY.

The Lord STANLEY, M. P., &c.

[Translation.]

FOREIGN DEPARTMENT, LISBON, *August 22, 1868.*

MOST ILLUSTRIOUS AND EXCELLENT SIR: I had the honor to receive the note which your excellency was pleased to address to me on the 19th instant, requesting, in the name of your government, and for the information of the commission on naturalization, to be made acquainted with the present state of the law, as regards the nationality of children born of aliens within the Portuguese dominions.

In reply it is my duty to state to your excellency that the law declares that those born in this kingdom of an alien father are Portuguese citizens, provided the latter does not reside in this country in the service of his own nation, and unless the former should declare, when of age or emancipated, or through their parents or guardians, if minors, that they do not wish to be Portuguese citizens. (Civil code, title 11, article 18, No. 2.)

Those born in this kingdom when the mother alone is Portuguese, if illegitimate. (No. 1.)

The declaration required in No. 2 shall be made before the municipality of the place where the declarer shall have resided. (§ 1.)

A minor on coming of age, or when emancipated, may, by means of a new declaration, made before the municipality of the place which he may have chosen for his domicile, recall the declaration which may already have been made during his minority, by his father or guardians, in accordance with No. 2, (§ 2.)

I avail, &c.

CARLOS BENTO DA SILVA.

Sir CHARLES A. MURRAY, &c., &c., &c.

PRUSSIA.

No. 2.]

BERLIN, *September 5, 1868.*

MY LORD: With reference to your lordship's dispatch to Lord Augustus Loftus, marked circular No. 173, of the 11th ultimo, instructing his excellency to furnish your lordship with a report with regard to the nationality of children born of alien parents within the Prussian dominions, I have the honor to inclose to your lordship, herewith, copy and translation of a note from the Prussian foreign office, in which it is stated that no special legal provisions exist in Prussia with regard to this question. Monsieur von Kehler incloses, however, a copy of the law of the 31st of December, 1842, with reference to the acquirement or loss of the rights of Prussian subjects, and remarks that, in accordance with the provisions of this law, the general principle observed with regard to nationality is that legitimate children follow the nationality of the father, and illegitimate children that of the mother. No legal consequences, as regards nationality, are attached to the circumstance of a child being born in the Prussian dominions.

I have the honor to transmit to your lordship a translation of the law inclosed in Monsieur von Kehler's note.

I have, &c.,

FRANK C. LASCELLES.

The Lord STANLEY, M. P., &c., &c., &c.

[Translation.]

BERLIN, August 31, 1868.

According to the contents of his excellency Lord A. Loftus's letter of the 24th instant, the government of Her Britannic Majesty are desirous of obtaining information relative to the legal provisions in force in Prussia with respect to the nationality of the children born of foreign parents within the Prussian dominions.

With reference to this subject, the undersigned has the honor to inform his excellency Lord A. Loftus that no special legal provisions exist in Prussia with regard to this question. In accordance with the regulations laid down in the annexed copy of the law of the 31st December, 1842, respecting the acquirement or loss of the quality of a Prussian subject, the general principle is observed with reference to the decision of personal relations, and also of nationality, that legitimate children follow the nationality of the father, and illegitimate children that of the mother, unless an alteration is made in consequence of the proceedings of the children themselves. No special consequences with respect to nationality are attended to the fact of being born in Prussia.

The undersigned avails, &c.

V. KEHLER.

His excellency Lord A. LOFTUS, &c., &c., &c.

Law respecting the acquisition and loss of the quality of Prussian by a Prussian subject, and his admission to foreign citizenship.—December 31, 1842.

We, FREDERICK WILLIAM, &c., &c., ordain, &c.

ARTICLE 1.

The rights of Prussian subjects are founded on—

1. Descent, (§ 2.)
2. Legitimization, (§ 3.)
3. Marriage, (§ 4,) and
4. Permission, (§§ 5, &c.)

Adoption does not alone produce this effect.

§ 2. Every legitimate child of a Prussian subject is by birth a Prussian subject, even though born in a foreign country. Illegitimate children follow the *status* of the mother.

§ 3. If the mother of an illegitimate child is a foreigner and the father a Prussian, the child may become a Prussian subject by means of legitimization drawn up in accordance with the Prussian laws.

§ 4. A foreign woman becomes a Prussian subject on her marriage with a Prussian.

§ 5. Permission to become a Prussian subject may be granted upon the issuing of a deed of naturalization, which the police authorities are empowered to grant.

§ 6. A permission to a foreigner to enter the service of the Prussian state takes the place of the deed of naturalization. An exception to this rule is made in cases of foreigners employed abroad as consuls or commercial agents.

§ 7. The rights of Prussian subjects can only be granted to those foreigners who—

(1.) Are capable of receiving them in accordance with the laws of their former country.

(2.) Have led an irreproachable life.

(3.) Have got a house or the means of subsistence in the place where they have settled.

(4.) Are in a position to sustain themselves and their families in that place.

(5.) If they are subjects of a German state, have fulfilled their military obligations to their original country, or have been released by so doing.

§ 8. The police authorities are bound before granting naturalization rights to inform the municipality of the district where the applicant purposes to reside, in accordance with the requirements of § 7, Nos. 2, 3, 4, and to listen to their statement and to regard their objections.

§ 9. The grant of naturalization confers all the rights and duties of a Prussian at the date of the grant.

§ 10. The permission to become a Prussian subject will be extended, unless a special exception is made, to the wife and children under age. If one of these should not have complied with the requirements of § 7, No. 2, respecting a blameless life, and should therefore not be admitted, the whole family must be refused.

§ 11. Nothing in this law shall affect the rights and duties of subjects resulting from the possession of landed property, and especially from the possession of manors and from the oath of homage.

§ 12. No parish may receive a foreigner as a member until he has obtained the rights of a Prussian subject.

§ 13. Residence within the Prussian state shall not for the future constitute a claim for becoming a Prussian subject.

§ 14. Foreigners who wish to reside in Prussia, and do not wish to be regarded as mere travelers, may be called upon to prove the continuance of their former allegiance by means of a certificate. (Heimathschein).

§ 15. The quality of a Prussian subject is lost—

1. By discharge upon the subject's request.
2. By sentence of the competent authority.
3. By living ten years in a foreign country.
4. By the marriage of a female Prussian subject with a foreigner.

§ 16. The discharge has to be asked for from the police authority of the province in which the subject's domicile is situated, and is effected by a document made out by the same authority.

§ 17. The discharge cannot be granted—

(1.) To male subjects who are between seventeen and twenty years of age, until they have got a certificate of the military commission of recruitment of their district, proving that their application for discharge is not made merely to avoid the fulfilling of their military duty in the standing army.

(2.) To actual soldiers, belonging either to the standing army or the reserve; to officers of the militia and to public functionaries, before their being discharged from service.

(3.) To subjects having formerly served as officers in the standing army or the militia, or having been appointed military employes, with the rank of officers, or civil functionaries, before they have got the consent of the former chief.

(4.) To the persons belonging to the militia, not being officers, after their having been convoked for actual service.

§ 18. To subjects wishing to emigrate into a state of the German confederacy the discharge may be refused if they cannot prove that the said state is willing to receive them. (See act of the German Confederation, article 18, No. 2, lit. A.)

§ 19. For other reasons than those specified in §§ 17 and 18, the discharge cannot be refused in time of peace. For the time of war, special regulations will be made.

§ 20. The document of discharge effects, at the moment of its delivery, the loss of the quality as Prussian subject.

§ 21. If there is no special exception, the discharge comprehends also the wife and the minor children that are still under their father's authority.

§ 22. Subjects living in a foreign country may lose their quality as Prussians by a declaration of the police authority of Prussia, if they do not obey, within the time fixed to them, the express summons for returning to their country.

§ 23. Subjects who either—

(1.) Leave our states without permission, and do not return within ten years, or

(2.) Leave our states with permission, but do not return within ten years after the expiration of the term granted by the said permission, lose their quality as Prussian subjects.

§ 24. Entering into public service in a foreign state.

The entering of a subject into public service in a foreign state is allowed only after his discharge (see § 20) has been granted to him. Anybody who has obtained it, is permitted to do so without restriction.

§ 25. A subject who—

(1.) Either takes public service in a foreign state, with our immediate permission;

(2.) Or is it appointed in our states by a foreign power, in an office established with our permission, as, for instance, that of consul, commercial agent, &c., remaining in his quality as a Prussian.

§ 26. General disposition.

Subjects who emigrate without having obtained their discharge, or violate, by their entering into public service in a foreign state, the disposition of § 24, are to be punished according to the laws existing in that respect.

Given under our hand and seal, Berlin, this 31st of December, 1842.

FREDERICK WILLIAM.

RUSSIA.

No. 181.]

ST. PETERSBURG, August 25, 1868.

MY LORD: In obedience to the instructions contained in your lordship's dispatch, marked circular, of the 11th instant, I have the honor to report that the general law of Russia in regard to aliens is, that all foreign subjects who have not taken an oath of allegiance to Russia in due form, are held to be aliens. The law of the 1st/₂ February, 1864, of which an abstract was inclosed in my dispatch of the 30th June last, stipulates:

"5. The allegiance (to Russia) when sworn to (by the subject of a foreign power) is

merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged as Russians.

"12. Children of foreigners not Russian subjects, born and educated in Russia, or if born abroad, yet who have completed their education in a Russian upper or middle school, will be admitted to Russian allegiance, should they desire to be so, a year after they shall have obtained their majority; and, lastly,

"13. The children of foreigners wishing to become Russian subjects will be admitted to Russian allegiance on the same terms as their parents."

I have, &c.,

ANDREW BUCHANAN.

The Lord STANLEY, M. P., &c., &c., &c.,

SAXONY.

DRESDEN, *November 27, 1868.*

MY LORD: With reference to your lordship's circular dispatch of the 11th August, directing me to report on the state of Saxon law with regard to nationality of children born of alien parents within the Saxon dominions, I have the honor to inclose in translation the information furnished me by the Saxon government on the subject.

I have, &c.,

J. HUME BURNLEY.

In reply to the note of Her Britannic Majesty's chargé d'affaires of the 19th instant the undersigned has the honor to state, with reference to paragraph 2 of the law of the kingdom of Saxony of the 2d of July, 1852, relative to acquisition and loss of citizenship, copy of which is herewith annexed, that children of aliens born in Saxony do not by the mere accident of birth acquire Saxon nationality, inasmuch as the right of Saxon citizenship *by birth* is obtained only on the supposition that either the father or the mother (whether lawfully married or not) were at the time of such birth, either here or abroad, Saxon subjects.

The undersigned, &c.,

FRIESEN.

DRESDEN, *November 21, 1868.*

Paragraph 2 of the law relative to acquisition and loss of Saxon citizenship of July 2, 1852:

By birth all those are entitled to Saxon citizenship whose father, or, if illegitimate, whose mother, at the time of their birth, whether at home or abroad, were Saxon subjects.

SPAIN.

MADRID, *October 8, 1868.*

MY LORD: With reference to my dispatch of the 18th of August last, inclosing copy of a note which I addressed to the Spanish minister for foreign affairs, requesting his excellency to furnish me with information respecting the nationality of children born of alien parents in Spanish dominions, I have now the honor to forward to your lordship a translation of the Marquis Roneali's reply to my communication.

I further beg to inclose copies of the Spanish constitution, and of the royal decree of November 17, 1852, in which the passages having particular reference to the subject in question will be found marked.

I have, &c.,

JOHN F. CRAMPTON.

The Lord STANLEY, M. P., &c.

LEQUEITIO, *September 15, 1868.*

SIR: The minister of the interior informs me, under date of 4th inst., that the constitution at present in force in the Spanish monarchy and the royal decree of November 17, 1852, form the legislation which actually governs the nationality of children born of foreign parents in Spanish dominions.

I have the honor to inform you of this in reply to the note from your legation dated the 17th August last, and avail, &c.,

MARCUS RONCALI.

Her Britannic Majesty's MINISTER PLENIPOTENTIARY.

Extract from the constitution of the Spanish monarchy, May 23, 1845 :

"Titulo 1.—De los Españoles.—Artículo, 1º.

"The following are Spanish subjects :

"1. All persons born within the dominions of Spain.

"The children of a Spanish father or mother, even though born without the Spanish dominions."

Extracts from the royal decree of the 17th of November, 1852:.

"Capítulo 1.—De los extranjeros y su clasificacion en España.

"ARTICLE 1. The following are to be deemed aliens :

"1. All persons born of alien fathers without the Spanish dominions.

"2. The children of an alien father and Spanish mother, born without the said dominions, unless they have reclaimed Spanish nationality.

"3. Those born within Spanish territory of alien fathers or of an alien father and Spanish mother, unless they have made a similar reclamation.

"4. Those born without the Spanish dominions of fathers who have lost their Spanish nationality.

"5. Spanish women married to alien husbands.

* * * * *
"Capítulo 3, art. 24. Aliens domiciled or temporarily resident within the Spanish dominions, and their children, are exempt from military service unless they have reclaimed Spanish nationality.

"But this does not apply to the sons whose parents have been born within Spanish territory, even though they may have preserved their alien nationality."

SWEDEN.

No. 9.]

STOCKHOLM, *September 17, 1868.*

MY LORD : With reference to your lordship's dispatch, marked circular, of the 11th of August, as to the Swedish law on the subject of the children of alien parents born in Swedish dominions, I have the honor to inclose herewith copy of a note which I have received from the Spanish minister for foreign affairs, wherein he informs me that there is no provision in the Swedish fundamental law or in the civil code on this subject, neither does there exist any special stipulation as to the nationality of children born in Swedish dominions of alien parents.

It is generally received, however, as expressed in Count Wachtmeister's note inclosed, that the nationality of the children is noways affected by the place of their birth, but by the nationality of their parents, and notably of their father.

I have, &c.,

J. PAKENHAM.

The Lord STANLEY, M. P., &c.

STOCKHOLM, *September 12, 1868.*

SIR : In reply to your note of the 18th ultimo, I have the honor to inform you that there is not in the fundamental laws, nor in the civil code, nor even in a special ordinance, a stipulation respecting the nationality of a child born in Sweden of foreign parents. Nevertheless, the opinion has always been held that nationality does not at all depend on the place of birth, but on the nationality of the parents. Consequently the children of foreign subjects do not, from the fact of being born in Sweden, enjoy fuller or other rights than those accorded to every foreigner.

Accept, sir, &c.,

WACHTMEISTER.

Mr. PAKENHAM, &c.

SWITZERLAND.

No. 98.]

BERNE, *September 6, 1868.*

MY LORD : In your dispatch, marked circular, of the 11th ultimo, I am instructed to furnish your lordship with a report, for the information of the naturalization commission, on the state of the Swiss law with regard to the nationality of children born of alien parents in Switzerland.

Finding it difficult, without the assistance of the federal government, to draw up a report on this subject, the laws concerning which appear to vary in different cantons,

I addressed a note to the president requesting him to obtain for me, from the various cantonal governments, replies to the following questions, which I thought calculated to procure the information required by the naturalization commission:

1. What is considered to constitute a *Swiss citizen* according to the laws of the various cantons?
2. In what manner, if in any, can such citizenship be forfeited?
3. Are the children of alien parents born in the canton regarded by the law as Swiss citizens?
 - a. *De facto* by the mere incident of their birth on Swiss territory?
 - b. If not, how long must the parents have resided in Switzerland previous to the birth of the children, or what additional circumstance, beyond the fact of their birth on Swiss territory, are required to constitute the children of Swiss citizens?
 - c. Are the children expected to *elect* Swiss citizenship by some *formal act* on their coming of age? and what is held to constitute a presumptive election of Swiss citizenship on their part?

In reply I have received a communication from the president, copy of which I have the honor herewith to inclose, together with the printed work therein referred to, drawn up by the federal chancery on the cantonal regulations for acquiring the right of citizenship.

I have, &c.,

J. SAVILLE LUMLEY.

The Lord STANLEY, M. P., &c.

BERNE, August 31, 1868.

In the note which the minister of Her Britannic Majesty addressed to the federal council on the 19th instant, his excellency expressed the desire to obtain various information upon the condition of Swiss legislation respecting the nationality of children born of foreign parents upon Swiss territory, which information was divided under the following heads:

1st. What is necessary that a person may be considered as a Swiss citizen according to the laws of the different Swiss cantons?

In order to become a Swiss citizen it is necessary that a person shall acquire the right of citizenship in a canton or a commune. No special right of Swiss citizenship exists. The right of communal citizenship takes the precedence and is acquired by descent, gift, or the payment of purchase-money, the amount of which varies according to the state of the commune's resources, and is always subject to the legislation of the canton.

After the acquisition of the citizenship of the commune, naturalization is conferred in the respective canton either by the government or legislative authority, for which naturalization the payment of a further sum as special purchase-money is required. Without naturalization the incorporation into a commune has no effect. So far as concerns naturalization of foreigners, the federal law only contains the provision of article 43 of the federal constitution, by virtue of which foreigners cannot be naturalized in a canton until they are freed from every tie toward the state to which they belong. The particulars of the legislation of the cantons are to be found in a collection of provisions relative to the subject, enacted by each canton, published in 1862 by the federal chancery, of which a copy is inclosed. If any changes have been made in those provisions, they relate, in each instance, to the form rather than the substance.

2. If citizenship can be lost, in what manner is it lost?

The right of Swiss citizenship ceases only with death, or by the voluntary renunciation, by the person who possesses it, of his cantonal and communal right of citizenship and by the release which the competent authority of the canton gives him. But this emancipation from the ties which bind him to the state is not granted until the proof exists in due form of the acquisition of citizenship in a foreign country. The legitimate children of an absent Swiss always acquire their right of citizenship from their father, and illegitimate children from their mother, provided that no other formality is necessary than the proof of descent. Swiss nationality is not lost by long absence, &c., as, in accordance with the provision of the same article 43 of the federal constitution, no canton can deprive any person leaving it from his right of origin or citizenship.

3. Are the children born in a canton of foreign parents considered in accordance with the laws as Swiss citizens?

a. *De facto*, by the mere fact of the birth of these children on Swiss soil.

In the contrary case:

b. How long must the parents have resided in Switzerland before the birth of the child, or what other circumstances, independently of the birth of the child on Swiss soil, are necessary in order that the children should be considered as Swiss citizens?

c. Must the children be expected to declare their choice of Swiss citizenship by a formal *act* on reaching their majority?

What gives ground for the supposition of a presumptive choice on their part of the right of citizenship?

In replying to this question and its three subdivisions, the federal council has the honor to observe that the principles just stated suffer no kind of exception; especially not in favor of foreigners born in Switzerland, even if they and their parents have been domiciled in Switzerland for a very long time. In this respect Switzerland maintains purely and simply the same principle that she recognizes for the children of her own citizens, viz, legitimate children follow the condition of their father, and illegitimate the condition of their mother.

Hoping that this information may be of some use to the naturalization commission, for which it has been requested, the federal council avails itself of this fresh occasion to renew to his excellency Mr. Saville Lumley the assurances of its high consideration.

On behalf of the federal council the president of the confederation,

DUBS.

The chancellor of the confederation,

SCHIESS.

APPENDIX.

ALPHABET

APPENDIX.*

Mr. Campbell to Mr. Fish.

UNITED STATES NORTHERN BOUNDARY COMMISSION,
Annandale, Dutchess County, N. Y., November 22, 1873.

SIR: In compliance with the request contained in your letter of the 10th instant, I have the honor to transmit herewith the copy of a report from Major Twining, the chief astronomer, containing the information you desired me to communicate to the Department.

I have, &c.,

ARCHIBALD CAMPBELL.

[Inclosure.]

Captain Twining to Mr. Campbell.

SAINT PAUL, *November 16, 1863.*

SIR: I have received yours of the 11th inst., in which you request a statement of the "location of the beginning and termination of the boundary line surveyed during the season, and the more important points through which it passed."

The topographical parties are still in the field and will continue their work until the first of February next. Even after their return it will require some time to bring their notes into such shape as to make an accurate map of the survey. I therefore enclose a general map of the country passed over, and have marked upon it the points of the boundary which have been determined by astronomical observations. I have also noted those matters of interest which have occurred to me. The survey extended fifty miles beyond the limit shown, but the map is the only one available and nothing of special interest occurs on the part omitted.

Before stating the results of the present season's work, I will give a brief *résumé* of the operations of last year.

The "northern boundary," as at present designated, has its initial point at the "northwesternmost point of the Lake of the Woods," and thence follows a meridian south twenty-seven miles to the 49th parallel of north latitude, and thence west along that parallel to the summit of the Rocky Mountains. In the autumn of 1872 the 49th parallel was determined at Pembina on the west bank of the Red River, and also on the east shore of the Lake of the Woods, by both English and American parties; and as the results agreed within a small limit of error, the mean of the observations was adopted. Observations were also made by the United States and English chief astronomers with the sextant, and afterward with the zenith telescope, for the latitude of the "northwesternmost point" of the Lake of the Woods. The question in regard I have considered at length in a former report.

A sight-line, which represented, in the opinion of the United States and British chief astronomers, the true position of the north and south line, which was a part of the boundary was cut through the woods; and finally, the 49th parallel of latitude was run from Pembina to the Lake of the Woods—the United States parties running thirty-three miles, and the British parties during the winter completing fifty-six miles, the remainder of the distance. The British astronomers also established in this distance two astronomical stations.

In this condition the work came under my charge as chief astronomer.

During the present season the line has been carried west from Pembina 408½ miles, leaving about 350 miles yet to be completed. The longitude of the initial point is 97° 13'; that of the western end of the line 106° 18' nearly.

Along the southern border of the Province of Manitoba the line has been marked every mile by a picket and mound three feet high. These are regarded as temporary marks to be replaced by iron monuments as soon as practicable. On the remainder of the boundary the engineers have erected stone or earthen monuments of large size, the greater number having a base of fifteen feet and a height of from five to six feet.

* Received at Department of State too late for insertion in its proper place.

These larger monuments are supposed to be permanent, and are placed on conspicuous points at average intervals of three miles. In the entire distance run during the summer twenty astronomical stations have been established.

A belt of topography has been carefully surveyed along the entire length of the parallel as far as the boundary was marked. The five miles north of the line was done by the British; that to the south, by the American parties. As this topographical work is included to aid in the future recognition of the boundary, it has been executed with the utmost care and accuracy. The river lines have, in some cases, been carried far beyond the five-mile limit.

The parties returning from the field have made a quite accurate survey of their respective routes, and these, in connection with similar routes to be surveyed during the next season, will form a valuable addition to our present knowledge of what has hitherto been an unexplored region.

For the purpose of determining absolute altitudes, each astronomical party has kept a careful barometric record; from the series at each station good mean results will undoubtedly be obtained.

As regards its general course, the boundary line keeps to the north of the Pembina River forty-five miles. It there crosses an open plain as far as the Turtle Mountain, which at the point of crossing is thirty-four miles in width. This mountain, or rather plateau, is exceedingly rugged, densely timbered, and covered with lakes, the largest being about a mile in width.

From the Turtle Mountain west the country possesses few points of interest, it being an open rolling prairie. The only exception to the general level is the *coteau* of the Missouri, which is here forty-five miles in width and very broken.

Beds of lignite crop out along the Mouse River between the 102d and 103d meridians of longitude. These exposures are all north of the 49th parallel. This coal is of average quality, similar to the lignites of the Missouri River, and probably belonging to the same formation. These deposits could not be considered of any value except in a country entirely destitute of wood.

As regards the general quality of the soil along the boundary and its capacity for supporting a large population, there is room for great difference of opinion. The soil near the Pembina River is deep and rich, and its productiveness has been demonstrated beyond a doubt. The supply of wood is sufficient for many years, and the country is sufficiently well watered.

West of Turtle Mountain the soil is poor and the average rain-fall is too small to make it at all probable that the land could be cultivated with any success. I have heard much speculation as to the gradual effect of the advance of the settlements from the east and the extension of the cultivated areas in increasing the amount of the rain-fall on the western plains. Such anticipations can be fulfilled, if ever, only after the lapse of many years, as the changes to be effected in the climate are too great to be compassed in any short period of time. The surveying parties now in the field are engaged on the topography of the country between the Red River and the Lake of the Woods, and are expected to complete the work by the 1st of February next. This work is done in winter, as the swamps and bottomless bogs prevent its being attempted in summer.

The fatigues and exposures incident to such a work, conducted in the dead of winter and in that inhospitable climate, are undoubtedly great, but such arrangements have been made as will insure the least possible suffering. The work is under the immediate charge of Lient. F. V. Greene, United States Engineers.

As only 350 miles of the boundary remain to be surveyed, the field-work can be completed during the next season.

I am, &c.,

W. I. TWINING,
Captain of Engineers.

ARCHIBALD CAMPBELL, ESQ.,
Commissioner Northern Boundary Survey.

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Am.b. 3040-270,d,1,2

urn:nbn:de:bvb:12-bsb11304297-9